

# EXHIBIT 1

**Chevron's RICO Fraud**  
**An Abuse of Indigenous Peoples, the Environment,**  
**and U.S. Courts**

*Background, Context, and Responses to the False "Findings"  
in the Chevron v. Donziger Case*

[W]e are dealing here with a company of considerable importance to our economy that employs thousands all over the world, that supplies a group of commodities, gasoline, heating oil, other fuels and lubricants on which every one of us depends every single day. I don't think there is anybody in this courtroom who wants to pull his car into a gas station to fill up and finds that there isn't any gas there because these folks [Steven Donziger and the Ecuadorian contamination victim plaintiffs] have attached it in Singapore or wherever else [as part of enforcing their final Ecuadorian judgment].

*—Hon. Lewis A. Kaplan (SDNY) at the first hearing in Chevron's RICO case, Feb. 2011*

This is an extraordinary case that has degenerated into a Dickensian farce. Through scorched-earth litigation, executed by its army of hundreds of lawyers, Chevron is using its limitless resources to crush defendants and win this case through might rather merit... Encouraged by this Court's implacable hostility toward Donziger, Chevron will file any motion, however meritless, in the hope that the Court will use it to hurt Donziger.

*—Attorney John Keker in reference to the RICO case, May 2013*

"[O]ur L-T [long-term] strategy is to demonize Donziger."

*—Chevron's lead PR consultant in 2009,  
describing the company's plan to evade liability  
in the Ecuador environmental case*

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## Introduction

*The imagination of American lawyers is just without parallel in the world. It is our one absolutely overwhelming comparative advantage against the rest of the world, apart from medicine. You know, we used to do a lot of other things. Now we cure people and we kill them with interrogatories. It's a sad pass. But that's where we are. And Mr. Donziger [with the Ecuador judgment] is trying to become the next big thing in fixing the balance of payments deficit. I got it from the beginning. – Judge Lewis A. Kaplan, in Chevron's RICO case*

Chevron's infamous civil "racketeering" (or RICO) case against Ecuadorian indigenous groups and their lawyers began and ended as a disgrace. It involved a U.S. court so desperate to rescue a U.S. company from a significant environmental liability imposed by a foreign court that it endorsed massive illegal payments by Chevron to a corrupt "fact" witness who repeatedly lied in court, and imposed countless other due process abuses that suggest a great degree of intellectual dishonesty. The U.S. judge who oversaw this spectacle, Lewis A. Kaplan, failed to disclose that throughout the proceeding he held significant personal investments in the oil industry – including, through a mutual fund, investments *in Chevron itself*. As prominent U.S. trial attorney John Keker said, the Kaplan/Chevron RICO case "degenerated into a Dickensian farce" because of the judge's "implacable hostility" toward the Ecuadorians and their lawyers. The details of what Kaplan allowed Chevron to do to Ecuadorian indigenous groups in his courtroom are chilling.

Judge Kaplan allowed Chevron to use his court – and by extension, the inherent judicial authority of the United States – to try to "rescue" the company from a large environmental liability of its own making. The environmental judgment against Chevron was imposed based on incontrovertible evidence that the company abandoned thousands of open-air toxic waste pits in the Amazon that still contaminate the groundwater and drinking water of tens of thousands of indigenous and subsistence farming communities in the Ecuadorian Amazon. Evidence also demonstrated that the company systematically and deliberately discharged 16 billion gallons of toxic "water of production" into rivers and streams, flared poisonous gas into the air, and dumped millions of gallons of oil waste along dirt roads in the region. Judge Kaplan refused to consider any of this environmental evidence in the RICO proceeding. For this reason and numerous others explained herein, the U.S. court decisions in Chevron's RICO case – all of which derive from Kaplan's flawed proceeding -- deserve no deference by any authority, the public, the financial markets, or even Chevron's own shareholders and employees. Placed in the context of new evidence that recently emerged proving the abject falsity of the paid-for witness testimony in the RICO matter, the decisions ultimately document a *vast fraud perpetrated by Chevron itself*. To be clear, the decision by Judge Kaplan in 2014 that indigenous groups in Ecuador committed "fraud" and "racketeering" to obtain their environmental judgment is not only erroneous, but the product of *criminal conduct by Chevron* in presenting fabricated evidence to a U.S. court.

Judge Kaplan, and the three appellate judges who accepted his factual "findings" without any independent analysis, turned a blind eye to a gross injustice inflicted by an American oil company on some of the most vulnerable people on the planet. Also targeted by Chevron in the RICO matter was various counsel for the indigenous groups, primarily U.S. human rights attorney Steven Donziger. Chevron admitted in 2013 it had spent at least \$15 million on one "corporate investigations" firm—one out of many—to spy on Donziger



and his family and to prepare up to 30 reports on every conceivable aspect of his life. Chevron used six public relations firms and dozens of law firms to try to “demonize” (in the company’s own words) Donziger in the realm of public opinion. Chevron’s latest gambit is to try to personally bankrupt Donziger: the company is seeking an egregious order allowing the company to seize over \$33 million in legal fees and costs from him. Of course, Donziger is a solo practitioner without even a fraction of that amount in his possession. The Chevron exercise of trying to recover “costs” for perpetrating its own fraud is about nothing other than trying to send a message of intimidation to other attorneys who might follow Donziger’s example and battle Chevron relentlessly to obtain justice for the Ecuadorian indigenous groups.

Ultimately, Chevron is using the U.S. court opinions to evade responsibility for causing what experts believe is the worst oil-related contamination in history. Judge Kaplan and the appellate court almost completely cooperated with Chevron’s unapologetic use of the RICO statute to to distract attention from the company’s own environmental crimes and fraud. The main purpose of Chevron’s massively expensive retaliation campaign—it has used over 2,000 lawyers and consultants since the inception of the strategy—is to block enforcement of the environmental judgment from Ecuador. The judgment was issued in 2011 in a country where Chevron had earlier insisted the trial be held and where it had accepted jurisdiction. Ecuador’s Supreme Court in 2013 unanimously affirmed the ruling in a well-considered 222-page decision. Behind the legal maneuvering, the affected communities in Ecuador suffer from skyrocketing cancer rates and other health problems deriving from Chevron’s policy of deliberately dumping harmful toxic oil waste into the rainforest during the time it operated in Ecuador from 1964 to 1992. Chevron never has contested the fundamental fact that its operations in Ecuador caused extensive pollution.<sup>1</sup>

Aside from being the largest environmental civil judgment in history, the Chevron environmental case represents the first time that indigenous communities have held a major oil company legally accountable for the full scale of its pollution. Chevron mounted the most far-reaching corporate defense in history not just to avoid this sizeable judgment, but also out of fear that the precedent might lead vulnerable communities all over the world that have been harmed by the practices of the fossil fuel industry to stand up for their rights -- likely leading to cascading levels of additional liability for Chevron and its industry peers. Structural pressures on the fossil fuel industry due to global warming, the rapidly increasing transition to clean energy, and low oil prices likely have made Chevron management even more angry at having to pay the Ecuador environmental judgment issued from the courts of its preferred forum.

This Report provides specific responses to the many flawed and distorted factual “findings” in the Kaplan and U.S. appellate court decisions.

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<sup>1</sup> Chevron’s main defense in the Ecuador trial was not that it didn’t pollute. Chevron executive Rodrigo Perez Pallares even admitted that the company deliberately dumped at least 15 billion gallons of untreated toxic waste (which contained the carcinogen benzene and other harmful chemicals) into Amazon waterways as a waste disposal mechanism. Rather, Chevron’s main defense was that any clean-up should be paid by Petroecuador, Ecuador’s state-owned oil company, even though Chevron (operating as Texaco) was the exclusive operator of the oil fields and planned, engineered, and constructed the polluting well sites and production facilities. The Ecuadorians’ legal team have prepared a summary of the overwhelming evidence against Chevron in the Ecuador trial available [here](#).

## Summary: The 12 Core False “Findings” by U.S. Courts

This report first provides an overview of the background and analysis of some overarching critical points regarding Chevron’s RICO prosecution. It then addresses the “factual findings” made by Judge Kaplan that were rubber-stamped without any inquiry or independent analysis by the Second Circuit. First, the report addresses the core claim of misconduct that drove the case both in the courts and in Chevron’s collateral media campaign: the unequivocally false claim that Attorney Donziger and others agreed to bribe the presiding judge in the Ecuador case in exchange for being able to “ghostwrite” the trial court judgment. The thin and patently corrupt evidence Chevron put forward in support of this false claim has been thoroughly debunked, and the claim has more recently been disproven through a forensic analysis of the “digital fingerprints” on the Ecuadorian judge’s hard drives. After explaining this in detail, this report starting on page 11 addresses a number of other claims as summarized in the appellate court affirmance of Judge Kaplan’s decision, responding to each in turn with supporting documents that illuminate the true facts and context. An executive summary of all these responses is provided here:

**1) False finding: Lawyers for the villagers wrote the Ecuador trial court judgment.** A forensic examination of the trial judge’s computer, undertaken by one of the world’s leading experts, definitively proved the falsity of this finding. See more at page 11 ([or click here](#)).

**2) False finding: Donziger tried to “extort” Chevron by issuing an inflated damages assessment.** The damages assessment, prepared by a scientist after an extensive field inspection at the beginning of the trial, was proper advocacy protected by the First Amendment. Further, contrary to the Kaplan court’s “finding” on this point, the damages figure in the report (\$6 billion) was significantly lower than Chevron’s actual damages as later determined by Ecuador’s courts and credible third parties. See more at page 17 ([or click here](#)).

**3) False finding: Donziger’s refusal to adduce sampling evidence favorable to Chevron was “extortion”.** The legal team for the villagers produced evidence to prove their claims; they were under no legal or ethical obligation to find evidence favorable to Chevron. Contrary to Judge Kaplan’s finding, it would have been legal malpractice for Donziger to adduce evidence to help Chevron fight his own clients. See more at page 19 ([or click here](#)).

**4) False finding: Donziger falsified the conclusions of an expert report.** This is false. Evidence ignored by Judge Kaplan shows the expert actually signed off on his report, which demonstrated extensive and illegal levels of toxic pollution at two Chevron well sites. See more at page 20 ([or click here](#)).

**5) False finding: Donziger secretly hired industry experts.** Donziger hired two technical experts to monitor the trial so the court would feel sufficiently animated to put an end to Chevron’s attempts to corrupt the proceedings. This was proper advocacy and any decent lawyer fighting for a fair trial would have done the same. See more at page 21 ([or click here](#)).

**6) False finding: Donziger “coerced” the trial judge to cancel judicial inspections of Chevron’s well sites.** This is false. Stripped of the demonization rhetoric, the relevant fact here is that the legal team for the Ecuadorians effectively *advocated* for the judge to allow them to withdraw the inspections they had unilaterally requested because they had concluded they had met their burden of proof. The judge granted the motion, as he should have. Chevron still inspected 100% of the sites it had requested. See more at page 23 ([or click here](#)).

**7) False finding: Donziger “coerced” the trial judge to appoint an expert witness, Richard Cabrera.** This too is false. The legal team for the villagers nominated Cabrera as a party expert to prepare a report on damages and the court appointed for this purpose in exactly the same way Chevron’s experts were appointed by the court for the company’s reports. This was part of a *pro forma* process in Ecuador regarding expert witnesses that was affirmed by three layers of courts in the country. See more at page 24 ([or click here](#)).

**8) False Finding: Donziger planned the Cabrera report and paid him secretly for the work.** The legal team for the villagers helped Cabrera plan his report, its experts drafted the report based on criteria they established with Cabrera, and they paid Cabrera a reasonable fee that was disclosed. Chevron did exactly the same with its experts. The process was consistent with practice in Ecuador and affirmed as such by Ecuador’s highest court. See more at page 24 ([or click here](#)).

**9) False Finding: Donziger’s team controlled Cabrera while denying involvement.** This is false and condescending. Nobody controlled Cabrera. Cabrera was a paid expert who exercised his independent judgment based on his assessment of the voluminous evidence against Chevron. Judge Kaplan’s incessant focus on Cabrera is misplaced and legally irrelevant, as affirmed by the rulings of three layers of courts in Ecuador. See more at page 25 ([or click here](#)).

**10) False Finding: Stratus, an American environmental consulting firm, wrote Cabrera’s report.** Stratus drafted the bulk of Cabrera’s report and it was entirely appropriate to do so as confirmed by Ecuador’s courts. After eight years of trial, there were thousands of pages of technical reports in evidence, including 64,000 chemical sampling results. The scientists at Stratus worked as a team to help Cabrera aggregate and present this voluminous information to the court. See more at page 26 ([or click here](#)).

**11) False Finding: Donziger arranged for Stratus to file objections to the Cabrera report.** This is true and entirely appropriate given various discrete shortcomings in the Cabrera report that the legal team felt needed to be addressed. See more at page 27 ([or click here](#)).

**12) False Finding: Donziger hires consultants to “cleanse” the Cabrera report.** Given Chevron’s constant and unfair drumbeat of complaints about Cabrera, the legal team for the villagers asked the court to let both parties prepare additional damages reports. Chevron and Judge Kaplan tried to make this seem sinister by claiming its purpose was to “cleanse” Cabrera’s report when in reality Cabrera’s report was empirically grounded and prepared consistent with Ecuadorian law. See more at page 27 ([or click here](#)).

## Context Around the U.S. Judicial Decisions

As explained in detail below, the U.S. court opinions in question are at their core based on false evidence fabricated by Chevron via the testimony of an admittedly corrupt witness paid \$2 million in cash and benefits by the company and coached for 53 consecutive days before being allowed to testify. This witness, Alberto Guerra, later admitted he lied repeatedly when testifying before Judge Kaplan about bedrock facts relied on by the court for its false findings. In fact, the testimony of this corrupt witness was “credited” by Judge Kaplan in an extremely problematic proceeding where the accused were not allowed to put on a meaningful defense and where even the barest mention of Chevron’s contamination, corruption and fraud in Ecuador—evidence absolutely critical to explain the basis of the environmental judgment against Chevron—was prohibited from any utterance in open court. Judge Kaplan also refused to seat a jury so he could decide the case alone.

Judge Kaplan also did something with Chevron’s racketeering trial that no judge in any country in the world had ever before attempted. He let a disaffected litigant (Chevron) that had lost a case in a foreign court where it had accepted jurisdiction return to its home-country court to collaterally attack that judgment by putting that foreign country’s *entire judiciary* on trial. This move had no legal basis and violated longstanding principles of international law. In fact, dozens of legal scholars from nine countries filed a “friend of the court” brief condemning the very idea of Judge Kaplan’s concept of the RICO case as a violation of international law.<sup>2</sup> The underlying environmental case in Ecuador was one where both parties had accepted jurisdiction, where the facts had been litigated for several years at great expense, and where the parties had agreed to respect the final judgment subject only to limited defenses on appeal. Not only was Chevron’s collateral attack on a foreign country’s entire judiciary something that had never before happened, it was a monumental waste of judicial resources and a profoundly disturbing example of U.S. judicial overreach. Ecuador, after all, is a sovereign nation and U.S. ally. The fact the Chevron attack on Ecuador was based on false evidence and distorted facts only makes it more disturbing.

### *Appeals Court Blindly Accepts Kaplan’s Findings*

On appeal, a three-judge appellate panel<sup>3</sup> affirmed Judge Kaplan’s decision. It did so blindly, with no independent analysis of his factual findings. The panel was made aware of the fabricated evidence credited by Judge Kaplan, but chose to ignore it. The panel also was presented with extensive evidence of Judge Kaplan’s procedural machinations and denial of due process during the RICO case, but chose to ignore it. The panel members also were made aware, as we explain below, that Judge Kaplan repeatedly distorted the context of Ecuadorian law and legal practice in Ecuador to help Chevron try to frame U.S. attorney Donziger as a “racketeer” so it could evade liability for its environmental crimes and fraud committed against indigenous villagers. Donziger, a graduate of Harvard Law School who has been described as a man of “Herculean tenacity” by BusinessWeek magazine, never had even one complaint filed against him in 25 years of legal practice until Chevron launched its demonization campaign. Judge Kaplan also refused to let Donziger pursue his far stronger counterclaims against Chevron for the company’s own criminal racketeering scheme (of which the Chevron RICO case targeting him was a central part) that was designed to deny justice to the Ecuadorians by demonizing their lawyers, as outlined in [this lawsuit](#). In civil trials, the accused is supposed to be allowed to file counterclaims against the accuser so all dimensions of the

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<sup>2</sup> The “friend of the court” brief is available [here](#). For additional analysis of why Chevron’s RICO case was unprecedented and lacked a proper legal basis, see [this appellate petition](#).

<sup>3</sup> The members of the appellate panel were Amalya L. Kearse, Barrington D. Parker, and Richard C. Wesley.

controversy can be heard and balanced by the same jury. Judge Kaplan barred such claims by Donziger and refused to even seat a jury, ensuring a one-sided proceeding in favor of Chevron.

### *Chevron's Bad Faith Forum Shopping*

Another of Chevron's abusive practices endorsed by Judge Kaplan and the Second Circuit was its continuous forum shopping to try to find a friendly court to help it evade the environmental judgment issued by the court in Ecuador. As mentioned, the environmental trial took place in Ecuador *at Chevron's request* after the company filed 14 affidavits before a U.S. federal court (where the case originally was filed) praising Ecuador's courts. Desperate to avoid a jury trial in the United States where evidence of its toxic dumping would have been presented, Chevron agreed to have the case heard in Ecuador where juries are not used. Chevron's promise to pay any adverse judgment as a condition of the case moving to Ecuador was quickly betrayed when it lost the case. Given that Chevron (operating under the Texaco brand) had systematically dumped toxic oil waste with impunity in Ecuador for almost three decades without facing even a single court judgment, the company thought it would be "business as usual" in the South American nation and that it could force a politically engineered dismissal. In fact, Chevron attempted exactly that when company executive Ricardo Reis Veiga—himself the architect of a sham "clean-up" of the company's waste pits in the 1990s that was later proven to be fraudulent—met with Ecuador's Attorney General on the first day of the trial and demanded that he (illegally) call the trial judge and pressure him to dismiss the case. The Attorney General obliged and placed the call, though the trial judge fortunately refused the demand. Reis Veiga admitted to these facts under oath in a deposition.

The affected communities filed their case in U.S. federal court in New York because of an abiding concern that Chevron would exercise improper political influence over Ecuador's courts. This was the same U.S. court where Judge Kaplan sits and where Chevron returned in 2011, in a fit of buyer's remorse, to file its RICO case. During the trial in Ecuador, which lasted eight years (2003 to 2011) largely because of Chevron's constant attempts to delay and sabotage the proceedings, the company filed an arbitration claim against the government of Ecuador under the U.S.-Ecuador Bilateral Investment Treaty. This claim asserted that Chevron was being denied "due process" in its favored courts in Ecuador and sought to shift any liability that might be imposed to the government. In other words, Chevron was trying to use the arbitration action (which is still pending after eight years) to obtain a taxpayer-funded bailout from the citizens of the country it victimized. As an added insult, the rules of the arbitration barred Chevron's victims from participating as a party or even attending the proceedings, which have been conducted in secret.

After Chevron refused to pay the judgment in Ecuador, and the villagers filed actions to seize company assets in other jurisdictions like Canada, Chevron began to rely on a new technicality to try to evade paying compensation to its victims. Chevron claimed it should never have to pay even one dollar of the judgment because all of its assets around the world were held in wholly-owned subsidiaries. By this logic, Chevron as the parent company did not actually have any assets in the enforcement countries to be seized, even though its subsidiaries were obviously such assets. Chevron's argument is frightening for many reasons, not the least of which is that the company operates around the world *only* through its wholly-owned subsidiaries. In fact, it has roughly 1,300 such subsidiaries in more than 100 countries. The company's subsidiary in Canada, Chevron Canada, has an estimated \$15 billion in assets that could be used to pay the entirety of the Ecuador judgment. But Chevron is trying to immunize itself from all liability to its victims by claiming any asset held by Chevron Canada is off limits to collection because it was not a defendant in the Ecuador case. In fact, Canadian law is clear that any asset held by a debtor, including a subsidiary, can be subject to collection. But Chevron is forcing the issue to be litigated, wasting valuable time and resources.



Chevron is essentially arguing that once it removed its assets from Ecuador, there was nothing the villagers could do to collect the first dollar of their judgment anywhere in the world given that all of its assets are held in subsidiaries. Because of Judge Kaplan's erroneous decision and the Second Circuit's endorsement of it, the villagers are now blocked from trying to seize Chevron's assets in the United States. In the legal world, Chevron has converted this sort of courtroom trickery into high art. It is most unfortunate, and ironic, that the same U.S. courts where Chevron's victims in Ecuador originally came to seek relief have now become complicit in the company's forum shopping strategy.

Nonetheless, in the long term there is little that Chevron can do to block the villagers from trying to seize the company's assets around the world—particularly given that the judgment came from a court system that Chevron repeatedly praised until it lost the trial there. Canada, Brazil, and Argentina—three jurisdictions where company assets are being pursued by the villagers—are only a few among the dozens of countries where Chevron conducts business and maintains substantial assets. Chevron will eventually be forced to comply with its responsibilities to the people of Ecuador and pay the court-mandated damages necessary to remediate the pollution it created. It is important to remember that the underlying pollution artificially enriched Chevron shareholders and executives by externalizing the costs of production onto some of the world's most impoverished and vulnerable people. Law and basic principles of fairness require that at least some of such funds be returned to the people who were victimized.

### *Chevron's "Demonize Donziger" Strategy*

Chevron openly admitted its goal with the RICO trial was "to demonize Donziger" and attack adversary counsel to evade paying its enormous liability to the people of Ecuador, which at the time of this writing has risen to \$12 billion. Given the success of the legal team for the villagers against Chevron in the Ecuador trial, it is clear that company regarded Donziger as uniquely dangerous; he was spied on for weeks in Manhattan by six agents hired by the corporate espionage firm Kroll, to whom Chevron paid at least \$15 million to prepare 20 to 30 reports on Donziger. This was also the firm that found the corrupt witness Guerra in Ecuador and paid him \$38,000 in cash out of a backpack to hold him over until he struck a more lucrative long-term deal with Chevron's lawyers in the U.S. Judge Kaplan wholeheartedly embraced the Chevron demonization campaign against Donziger and—as shown in this Report, including most directly through the judge's own words spoken from the bench—delighted in taunting Donziger and his lawyers throughout the case. During one hearing in the opening days of the case (before any evidence was presented), Kaplan inveighed:

The imagination of American lawyers is just without parallel in the world... [W]e used to do a lot of other things. Now we cure people and kill them with interrogatories. It's a sad pass. But that's where we are. And Mr. Donziger is trying to become the next big thing in fixing the balance of payments deficit. I got it from the beginning...

This report makes clear that the actual "racketeer" in this matter is not the Ecuadorian villagers who have suffered so at Chevron's hands, nor Donziger and other human rights lawyers who for years have fought valiantly for their clients. Rather, it is the oil company that has refused to comply with the rule of law or fulfill its legal and moral responsibilities to the thousands of people in Ecuador that it harmed.

Given that Chevron's paid witness in the RICO case admitted perjuring himself and that Judge Kaplan's hostility toward Donziger has now been comprehensively documented, the U.S. court decisions are fading rapidly into obsolescence. They are collapsing under the weight of their own internal contradictions and the unfair trial procedure that produced them. Already, Canada's Supreme Court has unanimously rejected

Chevron's attempts to use Judge Kaplan's "facts" to shut down the judgment enforcement process. Brazil's courts also have rejected Chevron's similar request in that country.

### ***Chevron's Corrupt Witness: "Money Talks, But Gold Screams"***

At the very heart of Chevron's RICO attack is the corrupt Chevron witness, Alberto Guerra. As indicated, Chevron paid Guerra at least \$2 million in cash and benefits and coached him for weeks before he testified. There is little question but that even today, years since he has performed any services for Chevron, Guerra remains a "kept man," paid significant sums of money by the company merely to keep quiet about the falsity and illegal procurement of his testimony. The original contract—promising value that has reached in excess of \$2 million—constituted an enormous windfall by any measure, but especially so given that Guerra testified that until Chevron and Kroll showed up at his door, he had no savings and was making only \$500 per month. As Guerra was negotiating with Chevron, he was caught on tape saying, "Money talks, but gold screams." Chevron's exorbitant payments to Guerra also violated various federal laws, as we explain below.

Guerra's resulting testimony provided Judge Kaplan the basis for two of his erroneous findings that are central to the company's public relations and legal campaigns to cover its tracks in Ecuador. First, based on Guerra's testimony, Judge Kaplan erroneously found that Donziger bribed the trial judge. Second, Judge Kaplan erroneously found that lawyers for the villagers led by Donziger arranged for the "ghostwriting" of the trial court judgment. It is now clear that Guerra lied on the stand about both the bribery and ghostwriting allegations—lies definitively proven after the close of the RICO case by scientific forensic analysis and admissions under oath from the witness himself in a separate arbitration proceeding. Given the evidence of corruption, subterfuge, and fabrication of evidence by Chevron lawyers and the company's star witness, it is truly shocking that U.S. federal courts have been willing to turn a blind eye to it all in their rulings in the *Chevron v. Donziger* cases.

It is clear from the factual responses below that the villagers—who live in roughly 80 indigenous and farmer communities in Ecuador's rainforest—not only have been victimized for decades by Chevron's dumping of toxic oil waste onto their ancestral lands, but have been doubly victimized by the fact Judge Kaplan and the Second Circuit allowed Chevron to use the enormous power of the federal judiciary to defame their accountability campaign and immunize a "favorite son" multinational from the consequences of its crimes and fraud. Apart from the many flagrant problems with Judge Kaplan's fact "findings" that are explained in detail below, there are numerous *legal* reasons why the Second Circuit erred in its affirmance of his flawed ruling. These errors—which demonstrate that the RICO case had no legal basis -- have been amply documented in legal briefs (available [here](#) and [here](#)) and in other materials where Chevron's various claims have been rebutted by Donziger and others. (See [this detailed article](#) in a legal publication and this [Huffington Post article](#).) This Report focuses on how Judge Kaplan and the Second Circuit distorted the underlying facts of the case in order to target Donziger.

### ***Judge Kaplan's Favoritism And Bias***

Evidence of Kaplan's disturbing and even racist comments toward the Ecuadorian villagers, his anger at the villagers for suing Chevron, his refusal to hear key evidence about Chevron's contamination and fraud, his refusal to let Donziger and others tell their story in open court, and his many perplexing and even illegal rulings were all designed to inflict maximum harm on the villagers and their judgment. The unpleasant details of Judge Kaplan's behavior during the trial have been documented at greater length elsewhere, mostly in legal briefs seeking his recusal (see [here](#) for one example). We briefly summarize some of the

problems so the reader can understand the actual context in which the false and distorted findings documented in this report were made.

Before Judge Kaplan even held an evidentiary hearing, much less a trial, he jumped on Chevron's bandwagon to turn Donziger into a "whipping boy" to distract from the company's wrongdoing. He called Donziger the "mastermind" of a litigation extortion effort against Chevron in Ecuador. He accepted Chevron's notion that the entire Ecuador case was "sham" litigation. He repeatedly characterized the villagers as the "so-called" plaintiffs, refusing to acknowledge their basic humanity. Judge Kaplan also said Donziger planned to use the case "to be the next big thing to fix the balance of payments deficit" of the United States. "I got it from the beginning," Judge Kaplan said in open court in reference to Donziger's supposed greed. (Greed is a hard label to pin on someone whose entire career has been dedicated to work on behalf of the indigent criminal defendants and human rights victims.) At another point, Judge Kaplan called the litigation a "game" and said "the name of the game is... to persuade Chevron to come up with some money." Judge Kaplan, who amassed a personal fortune as a corporate defense lawyer before taking the bench, seemed to take offense at the very idea of impoverished indigenous nationalities collecting significant damages from a large American oil company.

### *Judge Kaplan's Harassment of Donziger*

In what appears to be an unprecedented move in the history of U.S. jurisprudence, Judge Kaplan ordered Donziger to turn over his entire confidential case file to Chevron that was accumulated over 17 years of litigation. Judge Kaplan based the decision on "local rule" typically referenced as a guideline for discovery practice (requiring the filing of a privilege log at the same time as a motion to quash a subpoena) and never before used to impose draconian penalties of the sort imposed on Donziger. Judge Kaplan tried to justify this move by characterizing Donziger as "some sort of PR guy" rather than a lawyer. He then forced Donziger to sit for a record-breaking 19 days of largely harassing depositions conducted by a large team of Chevron lawyers, when the federal rules normally limit depositions to one day. Judge Kaplan's decisions essentially blew up the sacred attorney-client privilege as held by the affected communities. In the meantime, Judge Kaplan treated as ironclad the same privileges as applied to Chevron and its lawyers, thereby preventing the legal team from the villagers from obtaining the company's internal documents and creating a completely one-sided playing field in favor of Chevron from the outset. Judge Kaplan then went out of his way to defame Donziger by speculating in a written pre-trial decision (again, before any evidentiary hearing) that he might face "criminal exposure" for his work on the Ecuador case—a statement not only patently false, but also a clear effort to spook Donziger's clients and supporters into abandoning him. Judge Kaplan also encouraged Chevron to file hundreds of frivolous motions to squeeze the resources of Donziger's legal team, which ultimately caused Donziger's own lawyer to withdraw from the case and accuse Kaplan of letting it degenerate into the "Dickensian farce" described above. (For a full copy of Kecker's highly unusual public condemnation of a sitting federal judge, see [here](#).)

### *Judge Kaplan's Illegal Worldwide "Injunction"*

Desperate to protect Chevron and impose control over the Ecuador litigation from his Manhattan courtroom, Judge Kaplan, within mere days of the filing of the RICO case, issued an important ruling in favor of the company that was deemed illegal even by U.S. courts. Without first allowing Donziger and the villagers time to hire counsel to respond to Chevron's 150-page lawsuit and thousands of purportedly relevant exhibits, much less to present evidence, Judge Kaplan issued an unprecedented injunction against enforcement of the Ecuador judgment *anywhere in the world*. In essence, Judge Kaplan tried to dictate from his Manhattan courtroom how every judge in every country should rule regarding enforcement of the



Ecuador judgment, should such enforcement actions be filed (and none had been at the time of this ruling). Such a ruling had never before issued from any court in the history of the United States. In fact, no judge *from any country*, including judges from authoritarian and even totalitarian regimes, has ever tried to engage in such arrogant and imperious behavior from the bench. One might imagine Judge Kaplan's reaction if an Ecuador court tried to order U.S. courts to rule a certain way on an enforcement action.

### *RICO Trial: The Dickensian Farce*

At the subsequent RICO trial, Chevron and Judge Kaplan tried to accomplish the same thing that had already been reversed on appeal—illegally blocking enforcement of the Ecuador judgment. During the RICO proceeding, which ultimately was more a theatrical presentation choreographed by Chevron lawyers than a real trial where both sides could present evidence, Judge Kaplan denied Donziger and his clients a jury of impartial fact finders. He then refused to allow them to present evidence of Chevron's toxic dumping and fraud in Ecuador. He threatened Donziger and his team with contempt if they uttered anything about Chevron's environmental contamination in court—even though, as mentioned, the presentation of that evidence was absolutely vital for Donziger and his clients to be able to explain the context for comments found by Judge Kaplan to be part of the supposedly “extortionate” RICO conspiracy. The judge also allowed Chevron to use secret witnesses whose identities were hidden from Donziger and his clients. Finally, as mentioned, Judge Kaplan heartily accepted the false evidence from Chevron's corrupt witness Guerra about the bribe and ghostwriting that never occurred. This happened after he allowed Chevron to pay Guerra exorbitant sums of money, all in violation of federal law that prohibits payments to fact witnesses. To heap insult upon injury, it later turned out that during the trial Kaplan hid the fact he [held investments in Chevron](#) at the same time there was motions pending to recuse him for bias in favor of the oil company. To be clear, this is only a *partial summary* of the many abuses that took place in Judge Kaplan's courtroom.

### *The Role of Chevron's Law Firm In Orchestrating Corruption*

Chevron's main law firm in the RICO case, Gibson Dunn & Crutcher LLP, is notorious for its willingness to cross ethical lines in service of its corporate defendants. One U.S. federal court described the firm as being “permeate[d]” by a “culture [that] promote[s] obstruction, gamesmanship and flagrant disregard [for the law].”<sup>4</sup> Another court—the Supreme Court of Montana—was more blunt, calling Gibson Dunn's tactics outright “legal thuggery.”<sup>5</sup> Gibson Dunn clearly brought these “skills” to bear for Chevron in the RICO case when, for example, its lawyers coached Guerra for weeks to shore up his obviously untruthful testimony. Led by Randy Mastro (who billed Chevron at \$1,140 per hour) and Avi Weitzman, the Gibson Dunn team is unapologetic about offering services, as described in their own marketing materials, as “lifeboat lawyers” to “rescue” high-profile corporate clients from liability by “turning to the tables” against corporate critics through accusations of “fraud” or other wrongdoing. In fact, Gibson Dunn has a long history of bringing harassing lawsuits against persons who have targeted its deep-pocketed clients. Three times in the Ecuador case, the Gibson Dunn firm was sanctioned or criticized by judges for using litigations to harass supporters of the villagers or violate their First Amendment rights. Targets included environmental groups like Amazon Watch, bloggers, journalists, consultants, and even a documentary filmmaker.

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<sup>4</sup> E & J Gallo Winery v. Encana Energy Services, Inc., No. CV-F-03-5412, 2005 WL 6408198 (E.D. Cal. July 5, 2005).

<sup>5</sup> Seltzer v. Morton, 154 P.3d 561, 608-09 (Mont. 2007).

## Detail of the 12 False or Distorted Findings by U.S. Courts

### *False Finding #1: The Plaintiffs “Ghostwrote” the Ecuador Environmental Judgment*

Apart from Judge Kaplan, Alberto Guerra might be the most important name to remember in the unfortunate saga of Chevron’s RICO case. He is the admittedly corrupt witness paid by at least \$2 million by Chevron on whose testimony stands the entire “ghostwriting” claim. Guerra not only admitted he lied during the RICO case about key parts of this explosive issue, but a forensic report definitely and scientifically proves he lied. In other words, Guerra’s testimony about ghostwriting has been ***completely, scientifically, and indisputably debunked***. Yet, the Second Circuit endorsed the false finding about ghostwriting without even considering the evidence that destroys its entire factual predicate.

#### **How Chevron Bribed A Witness To Lie**

With regard to ghostwriting, Guerra testified that Donziger oversaw an arrangement where a bribe was promised to the Ecuador trial judge in exchange being able to write the judgment. This is the central component of Chevron’s RICO case. Chevron provided no other witness other than Guerra, or any other direct evidence, to corroborate his claim. A digital forensic analysis of the hard drive of the Ecuadorian trial judge’s office computer showed scientifically that the judgment against Chevron was not “ghostwritten” by the plaintiffs and given to the judge on a flash drive, as Guerra claimed. Rather, the forensic analysis demonstrated that the trial judge wrote the judgment on his office computer incrementally over the course of three months and in fact saved the Word document that became the judgment more than 400 times before issuing it. Additionally, even though Guerra’s credibility was already shot, he shockingly admitted in a related arbitration proceeding that he lied about key issues in his testimony in the RICO case. Equally as shocking, none of these developments—which render the Chevron/Kaplan false narrative a nullity—was even considered by the Second Circuit panel before issuing its opinion. For a discussion of the forensic report and to read the report itself, see [here](#).

The Second Circuit’s technical basis for refusing to consider this devastating new evidence about Guerra’s perjury is that it came “too late” and thus was not part of the official record of the RICO case that it was reviewing. This position is nothing less than Kafkaesque, especially because Donziger’s attorneys did present this new evidence to the Second Circuit in timely fashion in supplemental briefing as allowed by the federal rules. The Second Circuit unquestionably had the discretion to take this new and highly probative new evidence into account. The fact that it chose not to, despite the game-changing nature of the evidence and the enormous stakes involved—among other implications, the health and even survival of dozens of indigenous and farmer communities in the rainforest—is unconscionable. It reflects a political decision to protect Judge Kaplan (and Chevron) and join in the scripted “demoniz[ation]” of Donziger.

Much of the new evidence dismantling the false “bribery” and “ghostwriting” findings emerges from the international investment treaty arbitration dispute (“the Arbitration”) between Chevron and the Republic of Ecuador. This evidence is powerfully set forth in the briefs and testimony emerging from that case, which was initiated by Chevron in 2009 as a way to create leverage to pressure Ecuador’s executive branch to force a dismissal of the underlying environmental claims.<sup>6</sup> The evidence is also available in summaries of the same provided by Donziger’s counsel, Deepak Gupta, to the Second Circuit. While the “bribery” and

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<sup>6</sup> For further context on the fundamental problems with the arbitration proceeding and how Chevron unethically tried to use it as leverage against the rainforest villagers, see [this blog post](#).

“ghostwriting” claims are thoroughly debunked in those public materials, given their importance we summarize them below in further detail.

### **Background on Chevron’s False Narrative**

Chevron launched its retaliatory RICO litigation based on allegations of procedural irregularities in the Ecuador trial, even though those allegations already had been rejected by Ecuador’s courts. But while Chevron wanted these allegations in Judge Kaplan’s court, where it could expect a friendly reception, for procedural reasons it couldn’t avoid also presenting them in the Ecuador trial. This soon led to trouble for Chevron because it gave Ecuadorian courts—the real authorities on what is and isn’t allowed under Ecuadorian law and procedure—the chance to consider Chevron’s claims and, given their lack of real basis, to reject them. In 2011, the Ecuador trial court found that there were “no legal grounds whatsoever” supporting Chevron’s “fraud” claims. In 2012, an intermediate Ecuadorian appellate court concluded Chevron’s allegations “go nowhere without a good dose of imagination”. And in 2013, Ecuador’s Supreme Court concluded in a 222-page opinion that Chevron “never demonstrated fraud” despite its “incessant harping in this regard.” Chevron recognized that foreign courts that might be asked to enforce the judgment against the company’s assets likely would defer to Ecuadorian courts, especially given that the company had accepted jurisdiction in Ecuador.

To deal with this obstacle, Chevron went all in with the Gibson Dunn “rescue” plan. Working with Gibson Dunn lawyer Mastro and his team, Chevron neatly manufactured explosive new allegations in service of a larger goal: to implicate the entire Ecuadorian judiciary in wrongdoing, instead of just certain aspects of how the environmental trial was conducted. The idea was to so tarnish Ecuador’s judicial branch of government—which encompassed the same court system that Chevron repeatedly had praised when it was to its tactical advantage—such that no enforcing court in any jurisdiction in the world would accept the Ecuador trial court judgment, despite the overwhelming scientific evidence of the company’s reckless behavior and toxic dumping on which it was based.

Chevron meticulously built its false narrative about a bribe and ghostwriting from the ground up. First, it recruited Guerra and agreed to pay him massive sums of money. It then coached him to manufacture the “bribery” and “ghostwriting” allegations that observers of the RICO case are now so familiar with. The amounts Chevron paid Guerra by any objective measure can only be described as a bribe. Chevron’s goal was to use the fabricated testimony to broaden its fraud narrative from procedural complaints about the trial—all of which had been rejected by Ecuador’s courts—to encompass allegations about the court itself. The company’s intention was to lay down a basis to try to beat back enforcement efforts by the villagers in foreign jurisdictions. These enforcement actions were necessary given that Chevron had sold off all of its assets in Ecuador, forcing the villagers to try to collect their judgment elsewhere. Chevron officials also began to openly mock the villagers by asserting that the company would never pay any judgment that might issue. Some Chevron lawyers even taunted the villagers with the threat of a “lifetime of litigation” if they did not drop their claims.

Guerra’s central lie was to claim that the Ecuadorian legal team promised a payment of \$500,000 to the Ecuador trial judge to be paid when the judgment was enforced. But extensive discovery obtained by Chevron—including access to all of Donziger’s hard drives and emails—produced absolutely no direct evidence to corroborate any aspect of Guerra’s bribe story. There was not a single email or text message found between Guerra and any member of the legal team from the villagers related to the judgment. Guerra had told Chevron he emailed lead Ecuadorian lawyer Pablo Fajardo about the draft judgment, but Fajardo’s name was never found on Guerra’s email contact list and no email was exchanged between them. There was no record of any phone call between Guerra and any lawyer for the Ecuadorians. From the very

beginning, the holes in the Guerra allegations were immense and only grew larger over time. It turned out that no amount of Chevron coaching or evidence fabrication could salvage Guerra's credibility.

### **Guerra's Criminal History**

Guerra confessed to being a [deeply corrupt](#) individual even before Chevron's lawyers enlisted him as their paid-for star witness. As a practicing lawyer, he admitted paying clandestine bribes on at least 20 occasions before becoming a judge on the provincial court that presided over the case against Chevron. His tenure presiding over the environmental case in Ecuador, which began in 2003, lasted only seven months before a new judge took over the case as part of a normal rotation. Guerra later was kicked off the court for his corrupt behavior on another case.

Years later, as he was negotiating his deal to testify for Chevron, Guerra was caught on tape telling a company representative, "Money talks, but gold screams." Before Guerra even uttered the first word under oath in the RICO trial, his "bribe" testimony against Donziger was tainted because Chevron, in flagrant violation of the federal Anti-Gratuity Statute and established rules, paid him huge sums of money. The law bars payments to fact witnesses other than the bare minimum to cover expenses. By any objective measure, the payments and benefits Chevron bestowed on Guerra and his family constituted a bribe. Worse, it was a bribe encouraged by a judge who exploited his inherent prestige to try to frame the illegal payments as "proper" by arguing that Chevron was within its rights to operate a "private" witness protection program—again, a ruling never before seen from a U.S. court.

Chevron truly enriched Guerra, who had no savings and was making only \$500 per month prior to becoming a company witness. When Chevron representatives first made contact with Guerra in Ecuador, they turned over to him \$20,000 in cash out of a backpack to encourage his initial cooperation. Chevron later showered Guerra with benefits worth over \$2 million: immigration to the United States, a lavish monthly salary, a house, a housing allowance, a car, health insurance, immigration lawyers for himself and five members of his family, and the payment of his income taxes.<sup>7</sup> When Dean Erwin Chemerinsky, a leading U.S. legal ethics scholar, heard of the arrangement, he was so outraged that he provided the Ecuadorians [a legal opinion](#) *pro bono* condemning what Chevron had done.

### **Guerra's Other Credibility Problems**

Apart from the illegality of paying a fact witness huge sums for testimony, Guerra lost credibility because his bribery story changed repeatedly as previous versions became discredited by new facts. In the first version of Guerra's story, he claimed that Ecuadorian trial judge Zambrano met him at the airport in the capital city of Quito and gave him a draft of the judgment on a flash drive which he then downloaded into his personal computer to be edited. When Chevron investigators searched Guerra's computer and flash drives and found no digital trace of any draft judgment, this story simply could not be corroborated. Working closely with Chevron lawyers, Guerra then changed his story to account for the absence of any digital trace of the draft judgment. Only then did he begin to claim that he met Zambrano in the remote

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<sup>7</sup> The immigration benefit—bringing not just Guerra but several members of his family to the U.S.—was of particular value because it allowed Guerra to see, for the first time in nearly a decade, his children who were living illegally in the U.S. Chevron also offered Guerra and his extended family the only feasible avenue for long-term legal status in the U.S., in the form of an asylum application. Guerra testified that the asylum applications were more important to him than the money and other benefits he received. The big picture here is that Chevron whisked a known criminal out of Ecuador (where he could have been prosecuted for bribing judges) and provided him safe harbor in the United States as part of its plan to undermine the environmental judgment. Judge Kaplan not only blessed the scheme, he encouraged it by deeming it "legal" even though no court in U.S. history had ever tolerated what was essentially a gigantic bribe offered to a witness for his testimony.

jungle town of Lago Agrio where he was given a laptop with a draft of the judgment already on it. In this version, Guerra claimed he then gave the laptop back to Zambrano, hence “explaining” the lack of evidence on his own computer to support the flash drive story. The idea that Guerra was casually “mistaken” about where he was when he was first given secret access to what would be the biggest civil judgment in Ecuador history is absurd on its face and by any objective measure completely undermines his credibility. Other outlandish contradictions and incredulities regarding Guerra and his testimony are outlined in [this RICO motion for terminating sanctions against Chevron](#), [this RICO motion to strike his testimony](#), and [this post-trial brief](#) (pp.31-41). All of these submissions were summarily denied or ignored by Judge Kaplan.

Indeed, while Guerra’s credibility problems were patently evident at the RICO trial, since the end of that trial they have grown even worse—as inconceivable as that may seem to be for someone who essentially lost all credibility when he lied on the stand. Under a withering cross-examination in the separate arbitration proceeding between Chevron and Ecuador’s government, Guerra admitted he had repeatedly perjured himself before Judge Kaplan on several critical factual issues relied on by the U.S. judge for his findings that a bribe occurred in Ecuador. These admissions, of course, further undermine Judge Kaplan’s RICO decision given that the judge found the perjured testimony to be credible and the Second Circuit panel completely ignored this new evidence.

### **Guerra’s “Confession” of Lying During the Arbitration**

The lies Guerra admitted to during the arbitration proceeding tainted core evidence in the RICO case. For example, during the RICO trial, Guerra testified that he had an agreement where he would receive 20% of the supposed “bribe” proceeds that were to be paid to Zambrano. He never produced any evidence to support this claim. During his testimony in the arbitration proceeding, Guerra admitted he made up the story: “That was my sworn statement in New York, but what I said is that, because of a circumstance, because of a situation, I mentioned 20 percent when it wasn’t true, and I think that, as a gentleman, I should say the truth, and we did not discuss—I did not discuss 20 percent with Mr. Zambrano.”

Consider some of Guerra’s other confessions in the arbitration proceeding that strongly suggest Judge Kaplan got it wrong when he found the witness to be credible:

- Guerra admitted telling Chevron’s representatives that he had the draft judgment against Chevron on his computer. But when Chevron examined his computer, there was no draft judgment. Guerra testified that Chevron representatives told him, “Had we been able to find it, we would have been able to offer you a larger amount of money.”
- Guerra testified that Chevron wanted him to contact the Ecuadorian trial judge, Nicholas Zambrano, to offer him money to testify for Chevron. In our view, this was a Chevron attempt to lay the groundwork for another and even larger bribe with Zambrano that was never consummated. In the arbitration, Guerra said, “I understood from the representatives of Chevron that I would get more money once I was able to establish a connection between them and Mr. Zambrano.” He also admitted that Chevron representatives warned him if that he did not deliver Zambrano, he “would be left with nothing.” It turns out that Zambrano refused completely unethical entreaties from Chevron lawyer Andres Rivero that he meet with Chevron representatives to discuss “payments” for his testimony, in which Chevron no doubt planned to offer him huge sums to recant the judgment against the company.
- Testifying before Judge Kaplan, Guerra claimed he received numerous monthly payments of \$1,000 from Judge Zambrano dating to 2008 to help him draft orders on other cases. This



testimony was utterly irrelevant to whether Guerra was involved with the “ghostwriting” of the judgment in the Chevron case. Yet in a bit of circular reasoning, Judge Kaplan accepted it as corroborative of that completely different allegation. Yet even here Guerra’s claims fall apart. He admitted he could produce *no physical evidence* of even one such payment of \$1,000. The only physical evidence of any payment to Guerra from Zambrano came after the end of the environmental case, and it was for far less than \$1,000. Guerra conceded this payment “had no connection” to the Chevron case and Zambrano said it was a personal loan. Yet Judge Kaplan, in yet another display of intellectual dishonesty, relied on this testimony to supposedly “corroborate” the bogus ghostwriting finding in the Chevron case.

More details of Guerra’s admitted perjuries are reviewed in [this supplemental brief](#) filed by Donziger’s counsel before the Second Circuit in the appeal of the RICO decision. In another apparent swipe at Donziger and his clients, the three-judge panel ignored the submission. The panel also refused to consider any of the other problems with Guerra’s false and contradictory testimony.

### **Chevron’s Failed “Documentary Evidence” Argument**

Seeing the credibility of its star witness blow up and the Ecuador Supreme Court unanimously affirm the environmental judgment, Chevron tried yet a new tack to salvage its faltering strategy. Chevron’s lawyers at Gibson Dunn began to claim they had “documentary evidence” that supposedly backed-up Guerra’s claims of a bribe and ghostwriting: a hand-written “daily planner” Guerra allegedly kept that supposedly reflected meetings the witness had with Donziger and others. But this story quickly fell apart as well. Guerra’s planner actually did not reflect any meetings with Donziger. In fact, Guerra claimed he “lost” his planner for the time that covered the period when he claimed to have met Donziger in Ecuador’s capital city of Quito. Further, immigration records from Ecuador’s government showed Donziger was not even in Ecuador during the period of time covering the supposed meeting. The credibility of Chevron’s “documentary evidence” thus was completely undermined during the RICO trial. (See, e.g., [here](#) at pp.8-11 and [here](#) at pp.36-41; also [this Arbitration brief](#) at pp.132-40). Yet Judge Kaplan still relied on this documentary evidence as part of what appeared to be his frantic effort to attach a veneer of credibility to Guerra’s untruthful testimony.<sup>8</sup>

### **Another Chevron Dead End: Computer Forensic Analysis**

During the arbitration proceeding and following the RICO trial, Chevron decided to double down and make yet another bet on its discredited “ghostwriting” theory. That bet also backfired against the company, only this time in even more spectacular fashion.

During the arbitration Chevron demanded that the government of Ecuador (known as the Republic of Ecuador or “ROE”) produce the hard drives of the office computer of the trial judge who issued the judgment so they could be inspected. Given the almost infinite digital records and traces that working on and printing a document creates throughout a modern operating system, digital forensic experts would be able to determine once and for all whether the document that became the judgment had indeed been drafted on those computers or had been inserted via a flash drive as Chevron had claimed. The ROE allowed experts

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<sup>8</sup> Even though Guerra admitted before Judge Kaplan that he had bribed judges in Ecuador as a lawyer, Judge Kaplan claimed that Guerra was “credible” based on observations of his in-court demeanor. Of course, Guerra later confessed that he had lied repeatedly in front of Judge Kaplan while Judge Kaplan was observing his in-court demeanor. The reader can come to his or her own conclusions about what this suggests about Judge Kaplan’s own judgment.

from both sides to examine the judge's hard drives. The results are absolutely devastating to Chevron, Judge Kaplan, and the Second Circuit.

The ROE expert who examined the judge's hard drives, [Christopher Racich](#), is one of the leading authorities in the world on the subject of computer forensic examination. After examining the judge's hard drives, Racich stated in [his report](#):

The forensic evidence demonstrates that a document on Judge Zambrano's computer that eventually became the Lago Agrio judgment (named *Providencias.docx*) was created on October 11, 2010, and was saved on Mr. Zambrano's computers at least 439 times between then and March 4, 2011 (i.e., an average of multiple saves per day) . . . Over that time period, the *Providencias* document contained increasing amounts of judgment text. And there is no evidence to suggest any version of that document was provided to Mr. Zambrano by a third party.

This hard data irredeemably destroys Guerra's story of the judgment being drafted by the plaintiffs and given to the trial judge on a flash drive. There is simply no way to square this hard data with Guerra's testimony under oath before Judge Kaplan. In Chevron's final written submission in the arbitration on this issue, *it doesn't even try* to rebut this new information. The company's lawyers do not even attempt to explain how the Word document that became the judgment could be on the trial judge's office computer weeks before the time Guerra testified it was given to the judge on a flash drive, just prior to its issuance.

#### **Chevron's Final Hail Mary: Unfiled Work Product**

With Guerra's testimony dying under the weight of its own contradictions, and in the face of conclusive forensic proof that the Ecuador judgment indeed was written by Judge Zambrano, Chevron's entire narrative was in shambles. The company then put forth what can only be described as a Hail Mary claim: that the supposed "ghostwriting" can be inferred from the existence in the Ecuador trial court judgment of text allegedly drawn from internal memos prepared by lawyers for the villagers that Chevron claims were never filed with the court. Chevron calls this the "unfiled work product" theory, but it too fails to withstand serious scrutiny, as follows:

- Most instances where Chevron claims words in the judgment reflect "unfiled work product" have been *specifically disproven*. ROE lawyers from the prestigious American law firm Winston & Strawn comprehensively reviewed video clips from dozens of field inspections of Chevron's contaminated well sites conducted by the parties under the auspices of Ecuadorian court from 2004-2007. This video review demonstrated that both Chevron lawyers and lawyers for the villagers often filed documents with the Ecuador trial court by handing them to the judge or his clerk at the site inspection. These inspections took place at well sites deep in the jungle many miles from the courthouse. Sometimes these documents made it into the "official record" while other times they did not. When they did not, it was largely due to confusion or clerical error.
- The material submitted at the inspections but not logged due to confusion or clerical error was still properly in the possession of the Court and the opposing party, which received a copy. Once submitted, the material could still be relied on by the Court in its ruling.
- An example of how Chevron and Judge Kaplan tried to manipulate this issue concerned the so-called "Fusion Memo" that related to the Chevron-Texaco merger in 2001. This memo was written by the legal team for the affected communities. The document was relied on in part by the Ecuador

trial judge in writing the portion of the judgment related to this issue. The Winston & Strawn lawyers used emails and other evidence to conclusively prove that this memo was indeed filed with the court on June 12, 2008 -- even though Chevron erroneously claimed otherwise, a view predictably endorsed by Judge Kaplan. (For detail, see [this brief](#) at ¶¶ 293-300.)

- The Winston & Strawn analysis of the Ecuador trial court record revealed similar explanations for other documents that Chevron erroneously claimed supported its “unfiled work product” allegation. (See ¶¶ 301-340 of [this brief](#).) The Winston lawyers even found instances where the Ecuador trial court ruled on Chevron motions that were not logged into the official record. They also found instances where both parties submitted DVDs during the inspections that were not formally entered into the record. In other words, the trial court was prone to clerical errors. This is not surprising given the huge volume of material submitted—over 220,000 pages—and the fact the judge worked with only one secretary.

In sum, it is entirely unexceptional that the Ecuador trial court judgment relied on a small number of documents in the possession of both parties that were submitted to the court but not officially logged due to clerical error. The facts on this point do not in the least support the Chevron/Kaplan inference that the judgment was “ghostwritten”. And they certainly do not cure the mammoth credibility problems with Chevron’s corrupt witness, Guerra. Significantly, Chevron monitored the official record closely throughout the Ecuador trial and never raised any objection on this point until the company decided during the RICO matter that it could gain a strategic advantage by doing so.

### ***False Finding #2: Donziger Tried To Intimidate Chevron With An “Inflated” Cost Estimate***

The notion put forth by Judge Kaplan that Donziger, or any lawyer, could “intimidate” Chevron into doing anything against its will is rather preposterous. This finding assumes that a solo practitioner working out of his apartment (Donziger) had the capacity to bully the nation’s second-largest oil company (Chevron) into a settlement potentially worth billions of dollars even though that company had a team of no fewer than 60 law firms and 2,000 lawyers assembled for its defense. This notion fits neatly into the false and condescending narrative pushed by Chevron and Judge Kaplan that Donziger exercised voodoo-like power over persons, institutions, and events in Ecuador. With the evidence against it mounting in the Ecuador trial, Chevron strategists (led by notorious public relations hit man Sam Singer<sup>9</sup>) called for Donziger to be characterized as “the most powerful man in Ecuador” who was “pulling the strings” of an emerging “Banana Republic.”<sup>10</sup> Throughout his RICO judgment, Judge Kaplan appeared to incorporate Chevron’s insulting (and false) propaganda regarding Donziger’s supposed power to control Ecuador’s courts and executive branch. Given the long and ugly history of U.S. military and political intervention in Latin America, the Chevron posture about Donziger in our view has disturbing neo-colonialist, if not outright racist, overtones.

#### **David Russell’s Preliminary Assessment**

This Kaplan/Second Circuit finding relates to a preliminary assessment of the extent of Chevron’s environmental damage in Ecuador, published in 2004 just after the trial began. The assessment was authored by David Russell, an American technical expert in oil remediation retained by counsel for the villagers.

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<sup>9</sup> See, e.g., Joe Eskenazi, “Trust Me: Who Are You Gonna Believe, Sam Singer or Your Own Eyes?,” SF Weekly, Aug. 22, 2014, at <http://www.sfweekly.com/sanfrancisco/sam-singer-chevron-tatiana-the-tiger-public-relations/Content?oid=3115485>

<sup>10</sup> See [this internal Chevron memorandum](#).



Russell's preliminary assessment was based on an extensive two-week field inspection of the contaminated area and rough estimates of the amounts needed for a comprehensive remediation, based on various defensible and reasonable assumptions. Russell's \$6 billion clean-up estimate rocked Chevron's view of the case and infuriated company executives. At the time, the company was insisting it was not responsible for *any damages* despite the fact it had admitted to discharging into Amazon waterways billions of gallons of untreated toxic oil waste. The company also admitted to having abandoned hundreds of unlined waste pits filled with oil sludge that were visible to the naked eye; each such pit would have qualified as a Superfund site under U.S. law, according to experts for the villagers. Russell spoke extensively to the media about his preliminary assessment, which, to the great consternation of Chevron's executives, received coverage in several prominent newspapers.

Contrary to the erroneous Kaplan/Second Circuit finding, the damages amount in Russell's preliminary assessment *turned out to be low rather than inflated*. The Ecuador court, which years later had access to far more information about the extent of Chevron's contamination than Russell did in 2004, found in 2011 that the actual damages caused by Chevron were roughly \$8.5 billion. To illustrate just how modest this assessment was, the oil company BP has paid out close to \$50 billion in damages and fines in the United States for its far smaller and less damaging accidental spill in 2010 in the Gulf of Mexico. In any event, in the early years of the trial, Donziger and his colleagues pointed to Russell's clean-up assessment to describe publicly how much a comprehensive remediation of Chevron's damage in Ecuador might cost. Judge Kaplan and the Second Circuit "found" that by advocating in this fashion for what turned out to be a relatively low cost estimate, Donziger and the plaintiffs were trying to "extort" money from Chevron and trying to "intimidate" the company to settle the case.

We believe this finding not only is erroneous with respect to the merits of Russell's damages assessment, but also has disturbing implications for advocacy in a democratic society. Even if Russell's preliminary assessment was radically wrong based on the limited information available at the beginning of the trial (and it was not), there is absolutely nothing wrong with putting forth a cost estimate to the public, even a mistaken one. In fact, the touting of Russell's assessment by Donziger and his colleagues is speech protected by the First Amendment to the United States Constitution. But according to the Kaplan/Second Circuit logic, a party to a civil lawsuit can be prosecuted *criminally* for putting forth a favorable view of the damages in an early stage of litigation when typically both sides are advocating their respective positions in anticipation of settlement, which resolves the vast majority of cases. As far as we can ascertain, no court ever has ruled in this fashion in the history of the United States.

### **Judge Kaplan's Double Standard**

This issue is worth exploring further because it is another vivid example of the degree of intellectual dishonesty reflected in Judge Kaplan's handling of much of the RICO case. At the time of Russell's assessment, after admitting to dumping billions of gallons of toxic waste into Amazon waterways, Chevron was publicly claiming that there was "no" environmental harm in its former operations area in Ecuador and that it owed *no money* for clean-up. This was an outrageous claim on its face. Yet Judge Kaplan did not find that Chevron, by making this claim for litigation purposes, was attempting to "extort" Ecuadorian indigenous groups from compensation to which they were rightly entitled. To criminalize speech of this sort puts a severe chill on any advocate who might think of properly representing his or her client against powerful corporate defendants like Chevron. That said, it would have been equally inappropriate for Judge Kaplan to sanction Chevron for its claim that it owed no money at all after it caused massive harm to the people of Ecuador. Obviously, Judge Kaplan did not hold Chevron to the same standard (erroneous as it was) that he imposed on the villagers and their counsel. Again, this suggests Judge Kaplan employed a rank double standard designed to protect a corporate polluter and inflict punishment on its litigation adversaries.

It later turned out that Russell behaved in a grossly unethical fashion during the RICO trial. After being prepped by Chevron lawyers, he testified that his preliminary assessment performed years earlier – the assessment that he passionately defended to reporters at the time -- was actually based on what he called a “Scientific Wild-Assed Guess” or SWAG. It turns out that the “SWAG” characterization was concocted by Russell *after* he was terminated by Donziger for management problems related to his supervision of the technical work during the trial and *after* he started working closely with Chevron’s lawyers. After he settled his outstanding issues with Donziger, Russell unethically *started offering his services to Chevron* by sending flirtatious emails to company scientist Sara McMillan -- even though he had a duty of loyalty to the villagers who had hired him. That resulted in Russell appearing in Judge Kaplan’s court to trash his own scientific work by claiming the damages figure was inflated. In reality, the damages figure was not inflated and Russell ended up humiliating himself in the eyes of almost everybody but Judge Kaplan.

It would be hard to overstate how unsubstantiated the Kaplan/Second Circuit finding is on the Russell report. As part of its representation of the government of Ecuador in its arbitration with Chevron, the U.S. law firm Winston & Strawn in 2012 hired a team of respected scientists to re-assess the chemical sampling evidence presented in the Ecuador trial. These scientists spent weeks in Ecuador visiting contaminated Chevron sites that had been inspected as part of the trial and testing water and soil samples from the same locations. The sampling results completely checked out and corroborated the findings of the Ecuadorian courts with regard to Chevron’s liability and damages, as described at [pages 80-108 of this legal brief](#). The damages figures determined by this team of independent scientists was far higher than those in Russell’s preliminary assessment, further illustrating the hollowness of Judge Kaplan’s finding. It is worth repeating that three layers of courts in Ecuador, including the country’s Supreme Court, found against Chevron, Judge Kaplan, and the Second Circuit on this issue.

### ***False Finding #3: Donziger Refused to Test for Certain Pollutants***

Judge Kaplan concluded that during the Ecuador trial Donziger directed the technical team for the villagers to forego testing for the presence of certain chemicals at Chevron well sites that the judge believed could have produced evidence favorable to the company. Because he did not test for these chemicals, Judge Kaplan (with the affirmance of the Second Circuit) found that Donziger engaged in *criminal* behavior to extort a settlement from Chevron. This finding is so ludicrous that it scarcely merits a response. But we will explain it in some detail because it again helps to illustrate the extent of Kaplan’s intellectual dishonesty and the Second Circuit’s failure to correct the many legal and factual errors that were produced as a result.

The Chevron/Kaplan theory was that testing contaminated soils for BTEX—four harmful chemical compounds that occur naturally in crude oil—would show the presence of toxins of recent vintage such that it could only have been left by PetroEcuador, Ecuador’s state oil company that took over Chevron’s oil fields in 1992. According to Judge Kaplan, the evidence pointing to PetroEcuador would have helped Chevron lower its potential damages exposure. But Judge Kaplan never explained why Chevron itself could not have tested for BTEX to buttress its defense or why he believed it was Donziger’s responsibility to adduce evidence to help Chevron defend against his own clients.

Dig deeper and one might note the frightening implications of what Kaplan and the Second Circuit are trying to do here. The Ecuador trial—like all trials—was an adversarial proceeding where each side is responsible for presenting its own evidence. Chevron was responsible for producing evidence favorable to its defense, while the villagers were responsible for producing evidence to prove their legal claims. Chevron had hundreds of lawyers and technicians on its payroll and was obviously capable of producing the allegedly favorable evidence through its own experts. And, in fact, Chevron did exactly this with respect to BTEX at the beginning of the trial. Judge Kaplan’s idea of trying to punish—indeed, to *criminalize*—Donziger’s

decision not to adduce evidence favorable to Chevron is absurd, unethical, and in our view illegal. Other than in Judge Kaplan's proceeding, we *never* have seen a court anywhere in the world try to punish a party in a civil lawsuit for not adducing evidence favorable to its adversary.

Even worse for Chevron, the Kaplan/Second Circuit "finding" does not withstand even superficial scrutiny on the merits. In reality, BTEX can survive in an anaerobic (lacking oxygen) environment for decades. Thus, the presence of BTEX inside the many oil waste pits in Ecuador abandoned by Chevron—which are often sealed with a hard cap of rubbery sludge—could just as easily be traced to the time period of Chevron's operations and thus point to the company's culpability. The BTEX values reported at the very beginning of the site inspections (when the villagers did some limited testing for BTEX) were actually helpful to prove their claims. The rationale for abandoning the BTEX test was explained by Donziger in his testimony in the RICO case: testing for the more commonly used measure of Total Petroleum Hydrocarbons (TPH) not only better captured the presence or absence of oil contamination, but was both cheaper and "more useful because it was the same measurement regulated by Ecuadorian laws and most comparative international laws." ([Donziger testimony at ¶113.](#)) The decision by Donziger and his colleagues to test for TPH and not for BTEX was thus perfectly reasonable and in any event totally within their discretion.

Again, the fact Judge Kaplan assumed counsel for Ecuadorian villagers *owed him* some sort of an explanation for why years earlier they made a tactical decision about the production of evidence in a litigation in a foreign jurisdiction – a litigation that Judge Kaplan had nothing to do with – seems utterly absurd. But it again illustrates something important about Judge Kaplan: the extent of the judge's zealotry and intellectual dishonesty as he manufactured reason after phony reason to assist Chevron. It is also another illustration of just how absent the U.S. appellate judges were when asked to correct these "errors" – which actually do not appear to be errors at all, but rather intentional acts by a judge who said he "got it from the beginning" before the first scrap of Chevron's evidence was submitted.

#### ***False Finding #4: Donziger "Falsified" an Expert Report (Calmbacher)***

This Kaplan/Second Circuit "finding" refers to a report submitted by Charles Calmbacher, an American engineer. The legal team for the Ecuadorians hired Calmbacher as their court-appointed expert in the Ecuador trial. His mandate was to write two of the more than 100 evidentiary technical reports filed by the parties that documented Chevron's pollution. This voluminous body of evidence, which included more than 64,000 chemical sampling results, was used by the Ecuador trial court to find against Chevron and impose liability on the company.

Donziger and the Ecuadorians retained Calmbacher in 2004 to assess the first two of the contaminated Chevron well sites being inspected by the parties under court auspices. Calmbacher ultimately claimed to be ill and refused to complete his reports. Subsequently, Calmbacher sued Donziger for non-payment and sent a series of irate emails threatening physical violence and retaliation. For example, Calmbacher in 2005 sent this email to Donziger:

Please simply pay up. Don't start a war. Wars have no rules and people can suffer irreparable professional, psychological and physical damage as a result. You don't want that.

Calmbacher's animus toward Donziger, his bizarre behavior generally, his refusal to complete his work, and his hot-tempered outbursts were witnessed by numerous members of the legal team for the Ecuadorians.

Years later, as it was trying to lay down the first bricks for its false narrative in the RICO case, Chevron reached out to Calmbacher and asked him to become a company witness. It used an obscure federal discovery statute to depose Calmbacher in secret near his residence in Georgia. Chevron never notified the legal team for the Ecuadorians that the deposition was taking place. Nobody was in the room except Calmbacher and Chevron's lawyers. Predictably, those lawyers urged Calmbacher to attack Donziger. Apparently still holding a grudge against Donziger after the prior dispute, Calmbacher was more than happy to oblige. He testified with no cross-examination.

Calmbacher's testimony was riddled with errors and contradictions on points large and small. Most significantly, Calmbacher lied when testified that he never authorized the plaintiffs in Ecuador to sign his reports for him given that he was out of the country. In contemporaneous emails from the time, he very specifically so authorizes. And as lawyers for the government of Ecuador have demonstrated, Calmbacher's claim that he didn't make certain conclusions about the existence of contamination is rebutted by the results of his own soil and water samples that prove extensive levels of contamination attributable to Chevron at the sites he investigated. Calmbacher's own sampling of these sites showed levels of TPH contamination more than 70 times higher than the Ecuadorian legal limit and other legally excessive levels of harmful toxins such as Chromium VI, Copper, Lead, Nickel, and Zinc. (See [this brief](#) at ¶ 468.) Chevron's own experts, examining the same sites as Calmbacher, also found massive illegal levels of contamination.

Knowing that Calmbacher's testimony was full of holes and highly vulnerable to cross-examination, company lawyers *did not produce him for the RICO trial* as a witness. Instead, the company filed as "evidence" Calmbacher's secret deposition transcript in which he had never been subject to cross-examination. Violating legal rules that bar the use of deposition testimony as evidence when a live witness is available for cross-examination, Judge Kaplan accepted the transcript as "evidence" anyway. The fake testimony from the secret deposition in which there had been no cross-examination is the *only* evidence offered in support of the Second Circuit "finding" in this section.

As the government of Ecuador [summarized](#) in its brief in the arbitration matter: "[U]nsupported allegations by a terminated consultant with both an economic interest and a demonstrated animus toward the Plaintiffs cannot establish misconduct by the Plaintiffs, especially in light of Dr. Calmbacher's multiple misrepresentations while under oath." Again, the Second Circuit rubber-stamped Chevron's and Judge Kaplan's interpretation of the untruthful Calmbacher testimony. Judge Kaplan's acceptance of the deposition transcript instead of requiring Calmbacher's cross-examination, as the rules require, is yet another example of the judge's intellectual dishonesty.

### ***False Finding #5: Donziger "Secretly" Paid Industry Experts for Neutral Monitoring Services***

This finding against Donziger for using so-called "independent" experts to monitor the trial is grossly misleading and disconnected from the context of legal practice in Ecuador. It also contradicts the findings of three layers of courts in Ecuador, including the country's Supreme Court.

First, some background information. Expert witnesses are used frequently in litigation in the U.S. and the world over to opine about a technical issue before the court. Generally, in an adversarial system of justice, experts are paid by the party that hires them. Both parties are entitled to hire their own expert. It is standard practice for experts to opine in favor of the litigation position of the party paying them. This is how it worked in both the U.S. and Ecuador with some minor, insignificant differences.

In Ecuador, each party was allowed to nominate its own experts who were then appointed officially by the court. (In the U.S., the court must approve an expert as a witness before testimony is allowed, but the court

does not actually appoint the expert.) Consistent with these practices in both countries, experts in Ecuador (although appointed by the court) worked with the party that hired them to develop evidence consistent with their litigation position. In the “finding” on this point, both Judge Kaplan and the Second Circuit got it wrong on how experts work in Ecuador.

Judge Kaplan claimed that by paying their own experts and working closely with them, Donziger and his colleagues violated Ecuadorian law by interfering with the court’s own control over these same experts. Again, Ecuador’s courts—which obviously know much more than Judge Kaplan about Ecuadorian law and practice—completely rejected this view. Judge Kaplan’s finding is also inconsistent with how both parties in the Ecuador trial actually treated experts. Chevron’s own lawyers treated their experts in exactly the same way as Donziger did his. Yet Judge Kaplan predictably remained silent about Chevron’s control over its experts while excoriating the lawyer for the villagers for exercising control over his experts.

The villagers hired the referenced experts as observers to monitor the judicial inspections to protect the right of the communities to a fair trial. Given that lawyers for the villagers had ample reason to conclude that Chevron was trying to delay the inspections process, Donziger tried to use the presence of the observers to give the court a sense that “the world was watching” such that Chevron’s attempts to sabotage the trial would not be tolerated. Again, this was an entirely appropriate action consistent with long traditions of advocacy in an adversarial system of justice. In fact, any lawyer concerned about corruption in an ongoing trial would be remiss if he or she did not take measures to bring pressure to bear on the court to fulfill its duty to be a neutral arbiter.

There are two striking observations to be made about the Kaplan/Second Circuit claim that Donziger’s use of these observers was “criminal” or somehow improper. First, the observers had no official role and no impact on the trial whatsoever, other than perhaps to incentivize the Ecuadorian court to do its job properly. Second, Chevron did exactly the same thing by appointing its own observers to sit in vigilance over the trial process. Yet Judge Kaplan, again employing a double standard, only decided to “punish” Donziger for engaging in this entirely appropriate activity while remaining silent about Chevron’s similar behavior. Consider what Judge Kaplan ignored:

- Chevron made public “announcements” (see [here](#) and [here](#)) that it would use its own “independent international observers” to “monitor” the trial process. Again, Chevron did *exactly* the same thing as Donziger. Judge Kaplan tried to claim that Chevron’s practice in this regard was proper, while Donziger’s was not.
- Judge Kaplan also refused to consider other evidence that contradicts his so-called “finding” in this regard. Consider [this filing](#) by a Chevron lawyer introducing [a report](#) prepared by three experts paid by Chevron. These experts worked for Chevron for years to advocate the company’s environmental positions (often despite their “[serious doubts](#)” about Chevron’s advocacy), yet the Chevron lawyer called the experts “independent” and the experts repeatedly refer to themselves and their conclusions as “independent” in their reports. Yet Judge Kaplan found it to be *criminal* when Donziger also claimed experts for the villagers were “independent” when exercising their judgment.
- Another expert in the Ecuador trial put forward by Chevron was John Connor, an American environmental consultant. Connor [admitted to working for Chevron for 30 years without finding the company liable for even a single dollar in damages](#). As a classic paid expert, Connor’s role was to use the evidence to advocate for Chevron yet he was repeatedly represented by Chevron to the



Ecuador court as “independent.” Again, Judge Kaplan found that when Donziger did the same in Ecuador with his experts, it was wrong; when Chevron did it, there was no problem.

In sum, neither Chevron nor Judge Kaplan could cite a single provision of Ecuadorian law that was violated in the way technical experts were used. Ecuador’s courts completely rejected the Kaplan/Second Circuit finding on this point.

### ***False Finding #6: Donziger “Coerced” a Judge to Cancel Certain Site Inspections***

This finding is yet another example of Judge Kaplan concocting a phony issue to try to harm Donziger and taint the Ecuador judgment. The rebuttal arguments can be found in great detail in Donziger’s sworn testimony ([¶122](#)) and in submissions from the government of Ecuador ([pages 109-112 of this brief](#), [pages 46-51 of this Annex](#)). We provide a brief summary here.

This issue concerns the court-supervised inspections of Chevron’s contaminated oil production sites during the Ecuador trial. These inspections allowed the parties to lift water and soil samples from Chevron’s former production sites and have them tested for harmful toxins. The inspections process produced most of the scientific evidence—including roughly 64,000 sampling results—that proved the case against Chevron. Each party had the right to inspect any Chevron oil production site it wanted out of the 400 or so that existed in the geographic area relevant to the claims. The court granted all of Chevron’s requests for inspections, which included more than 30 of the company’s former well sites and separation stations. The issue arose when the villagers—after inspecting numerous Chevron sites and finding extensive pollution at all of them—concluded *after four years of trial* that they had gathered more than enough evidence to meet their burden of proof.

To accelerate the trial process, the villagers told the court they would withdraw the remaining inspections they had requested. The villagers did not want the trial extended unnecessarily to conduct even more time-consuming and expensive field inspections that would have produced nothing but redundant evidence against Chevron. In Donziger’s view, the claims of the villagers already were over-proved with multiple layers of scientific evidence adduced by both parties during the trial, corroborated by various independent third-party studies. Yet Chevron opposed the request by the villagers to cancel their own inspections. Chevron’s lawyers clearly preferred for the long trial to keep going rather than have the Ecuador court take a leap toward a final resolution on the merits that the company knew was likely to be unfavorable.

It is axiomatic that a party in a civil trial has total control over what evidence it chooses to produce, or not produce. The plaintiffs clearly had the right to cancel the field inspections of oil well sites that ***they had unilaterally requested***. Such a move would have had no impact whatsoever on Chevron’s ability to present any evidence it wanted. Indeed, all of the inspections Chevron requested during the Ecuador trial were performed. The company had the right to put forth any other probative evidence it wanted, and in fact did so. For Judge Kaplan to “find” that the cancellation of the inspections at the request of the villagers was improper—and thereby substitute his own judgment for that of the Ecuador judge actually presiding over the trial—is just plain wrong and in our view a wholly inappropriate exercise of American judicial authority.

Judge Kaplan also expressed irritation with the fact the plaintiffs had written a complaint against the Ecuador trial judge after he initially refused to let the villagers cancel the redundant site inspections. At the time, Chevron’s lawyers, intent on delaying the end of the trial, were hounding the judge to deny the request of the villagers to cancel the remainder of their previously requested inspections. Preparation of the complaint by the villagers was entirely proper. In Donziger’s memoir notes, he suggests that the judge’s awareness of the complaint was linked to the ultimate decision to “rule correctly” and to grant the request. Judge Kaplan found that the use of the complaint amounted to improper “coercion” when in fact it was an

example of proper advocacy against a disaffected litigant (Chevron) whose lawyers were trying to derail a trial that they knew the company was losing.

Judge Kaplan's suggestion that the Ecuadorian judge could be so easily "coerced" in this way is condescending. In Judge Kaplan's worldview, an Ecuadorian judge is presumed to be so easily cowed by the prospect of a merits-based complaint that he is somehow "coerced" into action. Feeding these kinds of prejudices about Ecuador's judicial system, both in court and in the media, was and is an explicit part of the Chevron strategy. In 2009, Chevron's lead strategist produced a [series of proposals](#) advocating that the company step up its attacks on the Ecuador judgment by way of "relentless[] use of the blogosphere," think tanks, and "elected/regulatory leaders" to push "themes" including positioning Ecuador as "the next major threat to America" and "the next Cuban missile crisis in the making". This Chevron consultant also suggested stepping up the intensity of the demonization campaign against Donziger by characterizing him as "the most powerful man in Ecuador" who was "pulling the strings of an emerging banana republic."

Judge Kaplan bear-hugged Chevron's strategy and incorporated elements of it into his rulings. In written opinions, he variously called Donziger a "field general" and a "master mind" and suggested that enforcement of the Ecuador judgment would leave gas stations throughout the United States without fuel. He openly mocked the Ecuadorian judiciary and ruled as a matter of law that the country was incapable of providing due process to any litigant—despite the fact that Chevron has won numerous cases in Ecuadorian courts over the years. All this is so egregiously parochial and partisan that it would be laughable—if it weren't now a perspective fully endorsed by the Second Circuit's affirmance of Judge Kaplan's decision.

### ***False Finding #7: Donziger "Coerced" a Judge to Appoint a Certain Expert (Cabrera)***

Ecuador's courts—the courts with obvious competence on the lawfulness and propriety of Ecuadorian procedure—looked carefully at Chevron's allegations on this point and rejected them. There was good reason for doing so, as we explain below.

Part of the context here was discussed above: experts on both sides were expected, just as in the United States, to cooperate with the parties that appointed them and paid them. The distinction indicated by the reference to a "global expert" is not significant. Like other experts nominated by the parties in the Ecuador litigation, "global" experts were requested and paid by a single party. Chevron requested, nominated, paid, met *ex parte* with, and controlled the work of its own "global" experts who quite clearly "played ball" with Chevron. The villagers wanted their own damages expert, Richard Cabrera, to work closely with them to present to the court accurate, science-based information documenting Chevron's extensive pollution. This is exactly what they did, and it was found by Ecuador's courts to be entirely proper.

Further, a close reading of the Second Circuit decision shows the court made a sloppy mistake. It reveals that the referenced "play ball" quote was not used by Donziger in reference to Cabrera, as the Second Circuit claims. Rather, it was used in reference to another potential expert who never worked on the case.

### ***False Finding #8: Donziger "Secretly" Paid Cabrera***

Judge Kaplan and the Second Circuit claim that paying Cabrera is somehow suggestive of wrongdoing. This is not true, as affirmed by the courts of Ecuador. Both parties in the Ecuador trial paid their own experts without disclosing the amounts or the means to the other party. This was an open practice and there was nothing "secret" about it as Judge Kaplan and the appellate court tried to claim. All payments to Cabrera by the legal team for the villagers were entirely proper.

More to the point, the issue of the Cabrera report is legally moot. The Ecuador trial and appellate courts did not consider the report when ruling given the constant drumbeat of Chevron complaints, combined with the

fact there was ample other evidence that pointed to the company's guilt. The fact that Judge Kaplan and the Second Circuit continue to focus on this one technical report out of the 106 such evidentiary reports submitted by the parties during the trial again illustrates their desire to find anything possible to taint the Ecuador judgment, even if it means using a document that is largely irrelevant.

Again, the "secret" payment issue regarding Cabrera was manufactured by Chevron to try to make an innocent act seem sinister. Having unilaterally requested his services, the plaintiffs were legally obligated by the Ecuador court to pay Cabrera. Those payments were made via checks or wire transfers, just as Chevron paid its experts. There was nothing sinister about it.

### ***False Finding #9: Donziger "Controlled" Cabrera's Work While Denying Involvement***

This finding again reflects what appears to be a profound misreading by Judge Kaplan of Ecuadorian law and procedure.

This issue can best be understood by the context regarding expert witnesses described above: the Cabrera global damages report was unilaterally requested by the plaintiffs. Cabrera was paid by the plaintiffs as required by Ecuadorian law. The plaintiffs also were involved in the preparation and submission of the work given that Cabrera was their expert, not Chevron's. Indeed, as Donziger noted in his sworn testimony, during the trial in Ecuador Chevron agreed with this non-controversial proposition. In fact, Chevron proposed that its primary paid expert in the Ecuador litigation (John Connor) be allowed to do the same work as Cabrera. This reflected Chevron's own agreement with Donziger that the nature of the appointment was for a party-controlled expert to do the work.

Donziger also testified that although the plaintiffs worked extensively with Cabrera, the practice was to prepare work within parameters he had indicated were acceptable. Ultimately, Cabrera had final say over the work product. The fact that much of the Cabrera report was drafted by a highly reputable American environmental firm, Stratus, fundamentally speaks to the scientific credibility undergirding the report, not to anything improper. Donziger and the lawyers for the villagers did not "control" the work of Cabrera any more than Chevron and its consultants "controlled" the work of the company's paid experts.

The trial court in Ecuador considered the company's arguments on this very point and strongly disagreed with Kaplan and the Second Circuit. That court stated:

[A] review of the case file shows that there have been no defects in the appointment of expert Cabrera, or in the delivery of his report. There are no legal grounds whatsoever for quashing either his appointment or his expert report. It should be stressed that this issue has been resolved on several prior occasions, and no new evidence has been submitted that would suggest the existence of any grounds for quashing that appointment or expert opinion.

On appeal in Ecuador, a panel of three judges—the impartiality of whom Chevron has never had grounds to challenge—affirmed that Chevron's allegations about Cabrera "go nowhere without a good dose of imagination." In 2013, Ecuador's highest court concluded, in a 222-page opinion as follows:

It suffices to point out that the company never demonstrated fraud, which it has been claiming without any legal support. We reiterate that it has not proven any omission or violation of procedure that would give rise to the nullity sought. The appellant's incessant harping in this regard departs from procedural good faith.



At the same time, the Ecuador trial court recognized that Chevron's strategy of manufacturing so-called "improprieties" regarding Cabrera could amount to a fig-leaf that the company might use to justify not complying with a final judgment. As mentioned, the Ecuador trial court at Chevron's request struck the Cabrera report entirely given that the court had roughly the same scientific sampling information from the other expert evidentiary reports submitted by the parties. The court later emphasized that the Cabrera report "had NO bearing on the decision." Again, the trial court observed there was voluminous other evidence in the record, apart from the Cabrera report, to justify the imposition of liability and damages on Chevron.

Although the decision to strike Cabrera's report put the villagers at an extreme disadvantage, Ecuador's Supreme Court confirmed the approach on a final appeal. In a unanimous opinion, that court confirmed that the trial judgment "did not take [Cabrera] into account" and noted that Chevron had never even "indicate[d] which law [it thought was] violated" by the Cabrera process. In no normal world would this decision seem remotely unusual or problematic. But without the Cabrera issue, Chevron's efforts to taint Donziger and the Ecuador judgment quickly run out of steam. So in addition to trying to bolster its case by paying for Guerra's false testimony about a bribe that never occurred, Chevron has desperately sought to keep the Cabrera issue alive in the foreign courts where the villagers are targeting Chevron assets to enforce the Ecuador judgment.

Chevron later tried to argue that the Ecuador trial court actually relied on parts of the Cabrera report even though it claimed to have disregarded it. Chevron pointed to small parts of the judgment that it asserted derived from Cabrera's work. But each of Chevron's cited passages was shown at trial to have a basis wholly independent of the Cabrera report. The Second Circuit, again without independent analysis, adopted Judge Kaplan's pro-Chevron view on this point. The degree of condescension and insult to foreign judicial officers required for this move is just staggering.

Chevron presented its complaint about Cabrera repeatedly before the only courts competent to address the issue – those in its preferred forum of Ecuador. Those courts repeatedly rejected Chevron's arguments. In the end, the Cabrera report amounted to a small and unsubstantiated due process complaint by a disaffected litigant. Chevron's arguments were considered and rejected by the trial court and all layers of appeal in Ecuador. The Second Circuit's continued effort to try to override a foreign court judgment on this point is highly inappropriate.

### ***False Finding #10: A Consulting Expert—Stratus—Wrote the Cabrera Report***

This claim is another Second Circuit "finding" unmoored from the context of Ecuadorian law. First, it is true that the prominent American environmental consulting firm Stratus drafted the bulk of Cabrera's report. Second, there was absolutely nothing wrong with this, as confirmed by three layers of courts in Ecuador. Third, it doesn't matter given that Ecuador's trial court disregarded Cabrera's report anyway.

Stratus played a critically important role in advising the villagers on how to gather and interpret scientific data derived from the judicial inspections. Recognizing the vital role Stratus played in marshaling the soil and water sampling results and other scientific evidence for the villagers, Chevron wanted to drive the company off the case. As part of its plan, Chevron named Stratus as a defendant (along with Donziger and the villagers) in the RICO case alleging that the company's role in helping to draft the Cabrera report was part of the supposed "fraud". But Chevron went further to try to pressure Stratus, even employing a form of blackmail. A Chevron official wrote a series of vicious and deceptive letters to clients of Stratus falsely claiming that the company had committed "fraud" in Ecuador and therefore should be terminated. Stratus claimed these letters constituted illegal "tortious interference" with its business because in fact there was no judicial finding at the time that any fraud had occurred.

The Chevron lawsuit against Stratus –also before Judge Kaplan -- was in our view designed to blackmail the company into abandoning the villagers. As detailed in [Stratus' counterclaims](#) against Chevron, Chevron [threatened Stratus and its professionals for years](#) with its intimidation strategy. Chevron even [intervened in an insurance dispute](#) to make sure Stratus would have to bear the full cost of defending the litigation rather than have those costs paid by its insurer. Under extreme financial stress and needing to save the jobs of its 75 employees, Stratus ultimately caved to the pressure generated by Chevron and Judge Kaplan and agreed to “disavow” the Cabrera report in exchange for Chevron agreeing to drop its lawsuit. The company survived, but Chevron’s legal goon squad was able to claim a valuable scalp from the team of the villagers.

Chevron later promised that Douglas Beltman and Ann Maest, scientists at Stratus who played leading roles in drafting the Cabrera report, would testify for the company in the RICO proceeding. But as with the discredited Chevron witness Calmbacher, Chevron’s lawyers never called Beltman and Maest as witnesses—no doubt because in sworn deposition testimony prior to trial they recounted details of the overwhelming evidence proving Chevron’s responsibility for the devastating environmental contamination in Ecuador.

Contrary to the Kaplan/Second Circuit finding, Stratus did nothing wrong in Ecuador. Chevron did something very wrong in blackmailing Stratus. And Judge Kaplan and the Second Circuit did something terribly wrong in blessing Chevron’s use of our civil justice system as a weapon of blackmail against a small company that had produced hard evidence of the company’s environmental crimes.

### ***False Finding #11: Stratus “Fabricated” Objections to the Cabrera Report***

This claim once again reflects Judge Kaplan’s apparent disdain for Ecuadorian law. It was also a clear attempt to steamroll Ecuador’s courts.

As mentioned above, the Cabrera issue was manufactured by Chevron and in any event is moot under Ecuadorian law. Chevron and the villagers helped to draft reports for their own nominated “experts” to review and use, including in the case of Cabrera. Objections filed regarding Cabrera’s report were indeed prepared by Stratus and were not “fabricated”—they were real, grounded in science, and reflected concerns the villagers had about several discrete shortcomings in some of the material submitted. Chevron filed objections to the same report on various other grounds.

To be clear, Chevron *never produced evidence* showing that any practice involving Cabrera violated Ecuadorian law. Both parties worked closely with their experts, as happens in courts throughout the world. Actual authorities on Ecuadorian law who have examined this issue, most notably Ecuador’s courts, have concluded that no law was violated regarding the Cabrera process.

### ***False Finding #12: Donziger Hired New Consultants To “Cleanse” the Cabrera Report***

This finding uses the word “cleanse” to unfairly try to taint the Cabrera report. There was no need to “cleanse” the Cabrera report given that it was grounded in scientific data, prepared consistent with Ecuadorian law, and was an entirely defensible assessment of Chevron’s dumping billions of gallons of toxic waste onto indigenous ancestral lands. The word “cleanse” was invented by Chevron to imply there was some problem with Cabrera’s work. Like almost all of Chevron’s arguments, it was enthusiastically adopted by Judge Kaplan and then wielded as a sword by the company to try to poke at the validity of the Ecuador judgment.

The only “new” fact here is that the Ecuador trial court—to deal with Chevron’s incessant and unsubstantiated complaints about Cabrera—requested in 2010 that both parties submit new damages assessments. These were supplemental reports prepared at the request of the court. Again, this request was

an eminently practical step to deal with Chevron's complaints. Chevron, per its practice of denying responsibility for its pollution, refused to submit a supplemental damages assessment. The plaintiffs did submit additional damages assessments prepared by several prominent U.S. technical experts. The submission of these reports infuriated Chevron because they took the focus off of Cabrera's report, on which Chevron had staked a huge investment as part of its public relations attack campaign.

The Ecuador trial court ultimately found that once it had made its liability finding against Chevron, it could reach specific damages figures by relying on per unit clean-up cost figures contained in reports by Chevron's own experts that were submitted during the trial. It thus based its damages numbers on neither Cabrera nor the supplemental experts submitted by the plaintiffs.

Chevron can have no legitimate objection to this pragmatic approach. Instead, it attacks with cheap rhetoric. In fact, evidence is used routinely in just this manner in trials the world over. The rhetoric means nothing. Judge Kaplan's embrace of Chevron's rhetoric-only attack is once again revealing of its approach to the case.

## The Result: Absurd Legal Determinations In Kaplan's RICO Ruling

Given how the RICO case played out, it should come as no surprise that Judge Kaplan ruled exactly how Donziger and his lawyer had predicted. Judge Kaplan found that Donziger and his clients were "racketeers" who tried to use the environmental litigation in Ecuador to "extort" money from Chevron—the same company that admitted to dumping billions of gallons of toxic waste into the rainforest, decimating five indigenous nationalities and causing a massive outbreak of cancer. As explained herein, Judge Kaplan did this by accepting false evidence from Chevron, by distorting and misinterpreting Ecuadorian law and procedure, by denying a jury and other due process protections to the defendants, and by consciously tilting the scales of justice to favor Chevron. Donziger's far stronger claims against Chevron for its racketeering in Ecuador, put forth in [this stunning lawsuit](#) against the company, was held in abeyance by Judge Kaplan for a full year—thus denying Donziger almost any meaningful discovery of Chevron—before it was denied for no legitimate reason. In so doing, Judge Kaplan shut down the ability of the villagers and their counsel to present the real truth of what Chevron did in Ecuador in open court.

Judge Kaplan also manipulated the case to lower the standard of proof from "beyond a reasonable doubt" to the civil standard of "more probable than not" even though Chevron was putting forth allegations of felonious criminal misconduct against Donziger. In all criminal cases involving felonies, the accused is entitled to a jury of impartial fact finders. But in Judge Kaplan's world, Donziger was denied a jury so the judge could decide the case alone. What resulted from Judge Kaplan's RICO theatrics is the very antithesis of justice. Consider the extent to which Judge Kaplan used tortured and dishonest reasoning to try to harm Donziger's reputation by supposedly finding him "guilty" without a jury of the following predicate felony offenses:

### *Fraud*

The central finding in the RICO case was that Donziger committed "fraud" by bribing the Ecuador trial judge. But there was no bribe. That finding was based on testimony from Chevron's admittedly corrupt witness Guerra, who admitted he lied repeatedly on the stand and who was paid at least \$2 million in cash and other benefits by the company. The reality is the reverse: Chevron committed "fraud" and engaged in racketeering by bribing Guerra to frame Donziger and his clients. Chevron, Guerra, and company lawyers were engaged in or connected to the real racketeering conspiracy.

Our view is that Judge Kaplan allowed his public courtroom, the operation of which is funded by taxpayer dollars, to be taken over and used by a private oil company to create a false record of wrongdoing to try to evade a legitimate environmental liability.

### *Extortion*

Although it is almost inconceivable, Judge Kaplan also found that Donziger engaged in the “extortion” of Chevron by publishing David Russell’s preliminary \$6 billion damages assessment at the beginning of the trial. (See the discussion above starting at page 17.) Judge Kaplan found that Donziger was trying to use the damages assessment to pressure Chevron to settle the case. Of course, the very idea behind almost any legitimate civil lawsuit is to pressure the defendant to settle the case as quickly as possible. It turns out the damages figure prepared by Russell was *low* compared to the actual damages caused by Chevron as later found by three layers of courts in Ecuador and other third-parties. But Judge Kaplan insisted with no reasonable basis that the figure was *inflated*, and that Donziger used the inflated figure to improperly pressure Chevron. In any event, a lawyer publishing a damages assessment during a trial – even one that is incorrect -- is certainly not improper, and it is definitely not extortion.

### *Wire fraud*

Judge Kaplan found Donziger guilty of “wire fraud” because he used telephone and email to communicate with the legal team litigating the case in Ecuador. This claim was entirely derivative of the false “fraud” finding mentioned above.

### *Money laundering*

Judge Kaplan found Donziger guilty of “money laundering” based on transfers of funds from his law firm in New York to pay case expenses in Ecuador. Again, this claim is entirely derivative of the false “fraud” finding described above.

### *Obstruction of justice*

Judge Kaplan concluded that Donziger engaged in “obstruction of justice” because of his involvement in the preparation of a sworn declaration that was submitted to U.S. courts by Ecuadorian lawyer Pablo Fajardo concerning the practice of expert witnesses in Ecuador. Fajardo’s view in the affidavit was entirely consistent with Ecuadorian law and practice as affirmed by various Ecuador law experts and confirmed by the country’s Supreme Court. But Fajardo’s view did not comport with Kaplan’s subjective view of how the law of Ecuador regarding experts should operate. There was nothing in the Fajardo declaration that was false, and the idea that filing an affidavit of this nature constituted obstruction of justice is preposterous. Donziger did not draft or sign the affidavit – he simply reviewed it with Fajardo prior to his signing to ensure accuracy.

### *Witness tampering*

In another major stretch that again reflects his intellectual dishonesty, Judge Kaplan found that Donziger engaged in “witness tampering” by suggesting minor changes to a proposed sworn declaration by an expert his team had hired, Mark Quarles. Not only is this standard practice – a lawyer suggesting changes to a draft affidavit from his own expert -- but Quarles cordially rejected all of Donziger’s suggested changes, preferring instead to use his own language. Quarles never

testified he felt pressured by Donziger and the affidavit was submitted as Quarles wrote it. By no possible stretch can this be considered witness tampering.

### *Travel Act*

Finally, Judge Kaplan found Donziger violated a federal criminal statute called the Travel Act by causing funds to be sent to Ecuador to pay an expert witness for the villagers, Richard Cabrera. The Travel Act forbids the use of the U.S. mail, or interstate or foreign travel, for the purpose of engaging in certain “criminal” acts. Thus, in Judge Kaplan’s view, Donziger committed a felony offense simply by traveling to Ecuador and wiring funds into the country to pay case expenses. This supposed felony “violation” is entirely derivative of the so-called “fraud” that never occurred, as explained throughout this report.

## Kaplan’s Final Act of Dishonesty: Inventing a Claim

Judge Kaplan seemed to implicitly acknowledge the many legal problems with his unprecedented RICO decision by doing something in his chambers after the trial that can only be described as underhanded in the extreme. Out of sight of the parties, he effectively added to Chevron’s case a claim under an archaic and defunct legal doctrine that was used a handful of times in the nineteenth century to “set aside” foreign judgments on the basis of “fraud” outside the context of an enforcement action. The doctrine was not just old: it had been effectively repealed and replaced by the statutory framework for enforcement of foreign judgments (and grounds for resisting the same) implemented by New York and every other U.S. state during the twentieth century. So there was a reason Chevron’s army of lawyers, who put everything else plus the kitchen sink into their complaint, either didn’t think of it or didn’t dare propose it. But Judge Kaplan added it, and of course found it to provide a separate non-RICO ground for giving Chevron victory in the case and the relief it wanted. The motivation was clear: By inserting this claim in his decision after the trial ended, Judge Kaplan gave Chevron (and himself) a sort of insurance policy during the appellate process. If the appellate court could not accept the multiple inventions and distortions of law that Judge Kaplan had to employ to keep Chevron’s RICO claims alive, it still might let Kaplan’s decision survive on this invented claim.

## Conclusion

If in fact there was any real evidence to support the explosive allegations of criminal misconduct leveled by Chevron, then Donziger and his colleagues almost certainly would have been prosecuted in criminal court where the full panoply of due process protections, including a jury, would have been available. There’s a reason this never happened, despite strenuous efforts by Chevron’s politically-connected legal team to enlist federal prosecutorial authorities to target Donziger. Any federal prosecutor engaging in even a cursory review of Chevron’s bogus bribe and ghostwriting “evidence” will quickly see that it is a house of cards that no reasonable fact finder would ever accept. Judge Kaplan clearly knew this as well, which is why he refused to seat a jury as Chevron pursued its Plan B civil racketeering case in his court. In fact, it is clear that the *only way* Chevron could have obtained any judicial opinion endorsing its fake narrative was through a historically unprecedented trial orchestrated by a solitary judge who in advance signaled to the company that he would ensure the outcome it sought. That the resulting opinion was obtained via a proceeding in the opinion of many that was actually a Dickensian farce matters little to Chevron, which is trying to leverage Judge Kaplan’s endorsement of its false evidence to throw up roadblocks to judgment enforcement actions filed by the villagers around the world.

It is now clear that the filing the RICO case was part of Chevron's own fraud to cover its tracks for losing a major litigation to indigenous groups in its preferred forum of Ecuador. If indeed Chevron representatives fabricated evidence and presented it to Judge Kaplan to try to frame its adversaries, including the very lawyers who won a judgment against the company, then Chevron and all officials responsible for this outrageous conduct might themselves be appropriately subject to criminal prosecution.

# **EXHIBIT 2**

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 C.A. No. 11 Civ. 0691 (LAK)

5 -----x  
6 CHEVRON CORPORATION,

7 Plaintiff,

8  
9 - against -

10 STEVEN DONZIGER, et al.,

11 Defendants.

12 -----x

13 June 25, 2018

14 10:07 a.m.

15 Videotaped Deposition of STEVEN  
16 DONZIGER, taken by Plaintiff, pursuant to  
17 Order, held at the offices of Gibson Dunn &  
18 Crutcher LLP, 200 Park Avenue, New York,  
19 New York, before Todd DeSimone, a  
20 Registered Professional Reporter and Notary  
21 Public of the State of New York.  
22  
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ALSO PRESENT:

ANDRES R. ROMERO-DELMASTRO, ESQ., Chevron  
Corporation

CHRISTOPHER HANLON, Videographer

DONZIGER

THE VIDEOGRAPHER: Good morning. We are going on the record at 10:07 a.m. on June 25th, 2018. Please note that the microphones are sensitive and may pick up whispering, private conversations and cellular interference. Please turn off all cell phones or place them away from the microphones as they can interfere with the deposition audio. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is media unit number one of the video-recorded deposition of Mr. Steven Donziger taken in the matter of Chevron Corporation v. Donziger, et al, filed in the U.S. District Court, Southern District of New York, Docket 11 Civ. 0691.

This deposition is being held today at Gibson Dunn & Crutcher located at 200 Park Avenue, New York, New York. My name is Christopher Hanlon. I'm from Veritext. I'm the videographer today. Our court reporter is Todd DeSimone also from

1 DONZIGER

2 Veritext. I am not related to any party in  
3 this action nor am I financially interested  
4 in the outcome.

5 At this time I would ask  
6 counsel to please state your appearances  
7 for the record.

8 MS. NEUMAN: Andrea Neuman,  
9 Gibson Dunn & Crutcher, for Chevron.

10 MS. CHAMPION: Anne Champion  
11 from Gibson Dunn for Chevron Corporation.

12 MR. HERRERA: Alejandro Herrera  
13 from Gibson Dunn for Chevron Corporation.

14 MR. STERN: Herbert Stern,  
15 Stern Kilcullen & Rufolo, for Chevron.

16 MR. SILVERSTEIN: And Joel  
17 Silverstein, also from Stern Kilcullen &  
18 Rufolo, for Chevron.

19 THE VIDEOGRAPHER: Thank you.  
20 At this time our court reporter can swear  
21 in our witness and we can proceed.

22 \* \* \*

23 S T E V E N D O N Z I G E R,  
24 called as a witness, having been first duly  
25 sworn, was examined and testified

1 DONZIGER

2 as follows:

3 EXAMINATION BY MS. NEUMAN:

4 Q. Good morning, Mr. Donziger.

5 A. I think there is one individual  
6 who didn't state his name for the record.

7 MR. ROMERO-DELMASTRO: I'm  
8 already on the record. Andres Romero for  
9 Chevron Corporation.

10 THE VIDEOGRAPHER: Thank you,  
11 sir. Thank you, Mr. Donziger

12 A. Can I just get a clarification  
13 from counsel, is this deposition being  
14 live-streamed? Are people watching this  
15 deposition over the internet? Are there  
16 other lawyers or people watching this  
17 deposition?

18 Q. In another room. I don't know  
19 that there is anybody in there.

20 A. There is another room? This  
21 firm?

22 Q. Yes.

23 A. Is it being live-streamed back  
24 to Chevron headquarters?

25 Q. No.

1 DONZIGER

2 A. Okay.

3 Q. Mr. Donziger, you have been  
4 deposed before, so you understand the rules  
5 of a deposition?

6 A. Yes.

7 Q. Are you on any medication that  
8 would prevent you from testifying  
9 truthfully today?

10 A. No.

11 Q. Is there anything else that  
12 would interfere with your ability to  
13 testify truthfully today?

14 A. No.

15 Q. I'm going to hand you a  
16 document previously marked as Plaintiff's  
17 Exhibit 5302.

18 (Plaintiff's Exhibit 5302  
19 marked for identification.)

20 Q. This is the Court's order which  
21 is Docket No. 1875, was entered in March of  
22 2014. You are familiar with this order?

23 A. Yes.

24 Q. I'm going to direct your  
25 attention to the language on page 2. It

DONZIGER

starts on page 1. "The Court hereby imposes a constructive trust for the benefit of Chevron on all property, whether personal or real, tangible or intangible, vested or contingent, that Donziger has received or hereafter may receive, directly or indirectly, or to which Donziger now has, or hereafter obtains any right, title, or interest, directly or indirectly, that is traceable to the Judgment or the enforcement of the Judgment anywhere in the world."

Do you see that?

A. Yes.

Q. What is your understanding of the language traceable to the enforcement of the Judgment?

A. Well, look, I am going to oppose the question on these grounds: I have made my position clear in filings with the Court. This issue is before the Court for a resolution.

There is a dispute that I don't think is factual, as I made clear in my



1 DONZIGER

2 filings, and I made my position clear in  
3 what's currently before Judge Kaplan and he  
4 has yet to rule. That's specifically the  
5 motion for a declaratory judgment. So  
6 there is nothing more to add to that.

7 Q. Mr. Donziger, we have a  
8 contempt hearing related to this order  
9 coming up this week, as you know.

10 A. Yes.

11 Q. And we are entitled to explore  
12 what you claim your understanding of the  
13 order which you are -- which is at issue in  
14 that hearing. So I'm going to ask the  
15 question again. If you are refusing to  
16 answer, just say "I refuse to answer" and I  
17 will move on.

18 A. With all due respect, I don't  
19 really see that as part of the scope of  
20 this deposition. I mean, this deposition  
21 is about --

22 Q. That's fine. When I ask the  
23 question that you view as not part of the  
24 scope, just so we can move it along, say "I  
25 refuse to answer based on," and you could

1 DONZIGER

2 just say scope --

3 A. So you are telling me --

4 Q. -- or privilege.

5 A. You are telling me how to  
6 represent myself in response to your  
7 questions? Listen --

8 Q. I'm just suggesting an  
9 efficient mechanism.

10 A. Hold on. Hold on. I will try  
11 to abide by that, okay? I believe that is  
12 beyond the scope.

13 I will also say this in an  
14 effort to move things along as well: You  
15 know, this is a complicated position for me  
16 because I am a witness and a lawyer at the  
17 same time. I am representing myself. So  
18 please take that into account. You know, I  
19 am going to do my best to answer the  
20 relevant questions that call for  
21 non-privileged information or information  
22 that there is no grounds to withhold at  
23 this point. So I'm with you. So I look  
24 forward to your next question.

25 Q. So you declined to answer or

1 DONZIGER

2 provide your understanding of what the  
3 language in the Court's order related to  
4 traceable to enforcement of the Judgment  
5 means, correct?

6 A. Look, no, I don't decline. I  
7 have already stated that on the record. I  
8 argued it on May 8th at the hearing. There  
9 is a whole --

10 Q. Mr. Donziger, I'm just  
11 interested in whether you are declining  
12 today while you are under oath as a  
13 witness.

14 A. I have made my position clear  
15 on that legal issue already, and I am not  
16 going to go any further on that issue  
17 today.

18 Q. And what's your understanding  
19 of the phrase -- the disjunctive phrase  
20 "traceable to the Judgment" as opposed to  
21 "enforcement of the Judgment" as used in  
22 Exhibit 5302?

23 A. Look, I have made it very clear  
24 that this document is not in my view the  
25 governing document of this issue. There

1 DONZIGER

2 was a subsequent order by Judge Kaplan on  
3 April 25th.

4 Q. Mr. Donziger, I understand your  
5 legal position. I'm asking your factual  
6 interpretation of the language. If you  
7 refuse to give it --

8 A. Listen, this is a legal issue  
9 in my view, okay? It is currently teed up  
10 for decision. I have more than amply  
11 explained my position on this issue,  
12 specifically in reference to the April 25th  
13 clarification order, which you are not  
14 bringing out and you completely ignored,  
15 that is Chevron completely ignored in this  
16 initial motion to hold me in contempt,  
17 which I believe is in bad faith, as I made  
18 clear. So there is nothing more to add.

19 Q. Have you received any monies  
20 that are traceable to the judgment since  
21 March of 2014?

22 A. I have made my position clear,  
23 okay?

24 Q. It is a factual question,  
25 Mr. Donziger. Yes or no or I decline to

DONZIGER

answer.

A. It isn't a factual question, excuse me, because traceable to the judgments is precisely one of the issues that is teed up before Judge Kaplan. So I don't know what you mean by that.

What do you mean traceable to the judgment? Do you mean money collected on enforcement or do you mean money raised to pay litigation expenses? Why don't you tell me, what do you mean?

Q. Mr. Donziger, have you received, since March of 2014, any money that was raised on the basis of the existence of the Ecuador judgment?

A. I object to the question.

Let me explain something. This deposition is about whether I have the ability to pay an \$813,000 judgment that Chevron has against me, and I have demonstrated that I can pay that judgment. It is also about the Elliott meeting. So please limit your questions to those two topics.

1 DONZIGER

2 Q. So you refuse to answer whether  
3 you have received any money raised on the  
4 basis of the judgment since March of 2014?

5 A. I have acknowledged before  
6 Judge Kaplan already that I have been paid  
7 out of monies raised to pay litigation  
8 expenses as he expressly permitted in his  
9 April 25th order. So please stop harassing  
10 me. I mean, ask a question about the  
11 Elliott meeting or about my financial  
12 condition. That's what this deposition is  
13 about.

14 Q. So the answer is yes, you have  
15 received money --

16 A. Don't tell me what the answer  
17 is. I answer the questions, you ask the  
18 questions.

19 Q. Well, not so far, but maybe we  
20 will get there.

21 On how many occasions have you  
22 received monies raised to pay, as you  
23 describe it, litigation expenses?

24 A. I object. It is beyond the  
25 scope of the deposition. I have received



1 DONZIGER

2 retainer payments, as I already expressed,  
3 consistent with the April 25th order.

4 Q. And pursuant to what agreement  
5 did you receive these retainer payments?

6 A. I have an agreement with my  
7 clients.

8 Q. And who do you define currently  
9 as your clients?

10 A. My client is the FDA.

11 Q. You stated in pleadings that  
12 the UDAPT is no longer your client; is that  
13 right?

14 A. That's correct.

15 Q. When did the UDAPT stop being  
16 your client?

17 A. Beyond the scope.

18 Q. The 47 Lago Agrio plaintiffs  
19 are no longer your client; is that right?

20 A. Beyond the scope.

21 Q. Just so the record is clear,  
22 when you say beyond the scope, you are  
23 declining to answer the question?

24 A. I am stating that consistent  
25 with court orders, this deposition is

1 DONZIGER

2 limited to the Elliott Management meeting  
3 and whether or not I can pay the judgment  
4 Chevron has against me, and I would ask you  
5 again to please limit your questions to  
6 those two topics.

7 Q. Well, I don't share your  
8 interpretation, so I will ask the questions  
9 and you can decline to answer if you think  
10 it is appropriate.

11 A. Why don't we -- why don't we  
12 focus on what we do agree on, which is I  
13 can answer questions about Elliott. That  
14 would probably be more productive.

15 Q. Can you turn to paragraph 5 of  
16 Exhibit 5302, please, which states  
17 "Donziger and the LAP Representatives, and  
18 each of them, is hereby further enjoined  
19 and restrained from undertaking any acts to  
20 monetize or profit from the Judgment, as  
21 modified or amended."

22 Do you see that, sir?

23 A. Yes.

24 Q. Have you undertaken any acts to  
25 monetize the judgment since March of 2014?

DONZIGER

1  
2           A.           Andrea, I'm not going to answer  
3 these questions, okay? This is the wrong  
4 order. There is a subsequent order, as I  
5 have made clear before Judge Kaplan, okay,  
6 that I believe all of my actions have been  
7 consistent with that order. They have been  
8 perfectly legal, okay? They have been  
9 perfectly consistent with Judge Kaplan's  
10 April 25th order and perfectly consistent,  
11 respectfully, with the Second Circuit  
12 decision affirming Judge Kaplan.

13           Q.           Describe for me what you mean  
14 when you say all your actions in your last  
15 answer.

16           A.           My actions in regard to trying  
17 to generate resources for my clients to pay  
18 litigation expenses.

19           Q.           Since March of 2014 have you  
20 represented anybody other than the FDA in  
21 connection with this matter?

22           A.           It is beyond the scope. In  
23 connection with this matter? You mean the  
24 case against Chevron?

25           Q.           The Ecuador litigation. I'm

1 DONZIGER

2 sorry.

3 A. The case against Chevron?

4 Q. The Ecuador litigation.

5 A. I do not remember the date that  
6 sort of things shifted exactly, but my  
7 client is now the FDA and has been for at  
8 least two years. I don't know exactly the  
9 date that it shifted.

10 Q. Have you, since March of 2014,  
11 have you raised money in connection with  
12 the Ecuador litigation for any clients  
13 other than the FDA?

14 A. I'm going to decline to answer  
15 on the grounds that that is First Amendment  
16 protected, and I have a pending motion, as  
17 you know, for a protective order on First  
18 Amendment grounds and --

19 Q. The identity of your client is  
20 a First Amendment issue?

21 A. The identity of -- well,  
22 information related to how our team  
23 structures itself, who the various client  
24 groups are, how they function, resources,  
25 is all First Amendment protected. Right

1 DONZIGER

2 now my client is the FDA.

3 Q. So you are taking the position  
4 that you are raising money on behalf of  
5 clients but for certain time periods you  
6 won't identify who those clients are, am I  
7 understanding you right?

8 A. No, my clients have always been  
9 the affected communities who live in  
10 Ecuador as represented by the FDA. That's  
11 happened for many years. There was a  
12 period of time, as you know, back in the  
13 1990s when my clients were individuals.  
14 Now they are the FDA, the beneficiary of  
15 the judgment, according to the Ecuadorian  
16 court order. That's my client.

17 Q. And is it -- I'll withdraw  
18 that.

19 I'm going to hand the witness a  
20 document previously marked as Exhibit 5303.  
21 It is Docket No. 1985.

22 (Plaintiff's Exhibit 5303  
23 marked for identification.)

24 Q. This is a judgment entered  
25 against your client, the FDA, and others.

1 DONZIGER

2 You are familiar with this  
3 document, Mr. Donziger?

4 A. Yes.

5 Q. Since Exhibit 5303 was entered  
6 on April 23rd of 2018, have you solicited  
7 any investments in the Ecuador litigation?

8 A. My position is that this  
9 default judgment does not change the  
10 landscape at all for the FDA's ability to  
11 raise money consistent with Judge Kaplan's  
12 order from April 25th, 2014. The specific  
13 answer to your question I believe to the  
14 best of my recollection is no.

15 Q. Have you received any funds  
16 raised based on the existence of the  
17 Ecuador judgment since April 23rd of 2018?

18 A. I have not.

19 I'm sorry, I need a  
20 clarification of the question. Received  
21 any funds from who?

22 Q. From anyone that were generated  
23 based on investments in the Ecuador  
24 judgment.

25 A. No.



1 DONZIGER

2 Q. Do you currently control any  
3 funds that were raised based on the  
4 existence of the Ecuador judgment?

5 A. Beyond the scope; the scope  
6 being my current financial condition and  
7 the Elliott meeting. I mean, it would be  
8 great if you could focus on those two areas  
9 where we agree.

10 Q. Mr. Donziger, just so we're  
11 clear, there is no theory that it is only  
12 your current financial condition.

13 A. Well, that's my view of it.

14 Q. Okay.

15 A. I know you have a different  
16 view because you want to find out  
17 everything about me, okay? Look at your  
18 subpoena. But I oppose that view. I don't  
19 think it is fair and I think it violates my  
20 constitutional rights. So that's why I  
21 filed the motion for protective order  
22 which, by the way, you guys have not  
23 responded to. So are you conceding that  
24 motion?

25 Q. Mr. Donziger, we are here for a

1 DONZIGER

2 deposition. We can have a meet and confer  
3 later.

4 A. I momentarily forgot. I  
5 apologize.

6 Q. So you are refusing to disclose  
7 whether or not you currently control funds  
8 that were raised based on the existence of  
9 the Ecuador judgment?

10 A. My position --

11 Q. It is just a yes or no. Are  
12 you currently refusing to provide that  
13 information?

14 A. I already said it is beyond the  
15 scope.

16 Q. Okay.

17 A. It is beyond the scope of the  
18 deposition.

19 Q. And you have not solicited any  
20 investments in the Ecuador judgment since  
21 April of this year; did I understand that  
22 correctly?

23 A. You didn't ask that question  
24 before. You asked a different question.

25 Q. Have you solicited any

1 DONZIGER

2 investments in the Ecuador judgment since  
3 April of this year?

4 A. I have a right to solicit in my  
5 view based on Judge Kaplan's clarification  
6 order -- well, I should say help my clients  
7 generate the resources they need to pay  
8 litigation expenses. These are not  
9 investments I'm offering based on anything  
10 I own, to be very clear. These are,  
11 generally speaking, these are efforts to  
12 assist the client group get the resources  
13 they need to keep the litigation going.

14 Since April 23rd I don't  
15 believe I have, but it is possible. I am  
16 in a constant state of trying to help my  
17 clients generate resources to be sure the  
18 litigation continues and ultimately Chevron  
19 is held accountable for what it did in  
20 Ecuador.

21 Q. If you have solicited  
22 investments in the judgment on behalf of  
23 the FDA since April of this year, would you  
24 have documents relating to those  
25 solicitations?

1 DONZIGER

2 A. Not necessarily.

3 Q. Do you know one way or the  
4 other?

5 A. Well, you know, I don't know  
6 the answer to that question because, as I  
7 sit here today, as I have already testified  
8 I don't know of anyone that has been  
9 solicited since the default judgment was  
10 entered.

11 Q. And your view is that the FDA  
12 is still free to raise money on the basis  
13 of the Ecuador judgment?

14 A. Absolutely.

15 Q. I'm going to give the witness a  
16 document previously marked as Exhibit 5304.  
17 This is Docket No. 1968.

18 (Plaintiff's Exhibit 5304  
19 marked for identification.)

20 Q. If you look at page 2 of this  
21 order, Mr. Donziger, it is ordered that  
22 "Donziger, having had actual notice of this  
23 order" -- oh, I'm sorry, let me restart  
24 that.

25 The order states "Ordered that

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Donziger, as well as any other person or entity having actual notice of this order and acting at his direction or in concert with him, including without limitation, Katie Sullivan, Streamline Family Office, Inc., Jonathan Bush and athenahealth, Inc., preserve and maintain within the United States any and all documents or evidence relating to the Judgment or compliance therewith."

Do you see that, Mr. Donziger?

A. Yes.

Q. Do you recall when the Court entered this order in March?

A. Yes.

Q. Have you maintained all documents relevant to this action?

A. Yes.

Q. Have you destroyed any documents?

A. No.

Q. Have you destroyed any documents relating to any efforts to raise monies related to the Ecuador judgment?

1 DONZIGER

2 A. Since this order was in effect?

3 Q. Uh-huh.

4 A. To the best of my recollection,  
5 no. That's not my practice.

6 Q. Have you destroyed any  
7 documents prior to the date of this order?

8 A. It is possible, when this order  
9 was not in effect. Generally, it's not my  
10 practice to destroy documents or e-mails.

11 Q. So as you sit here today, you  
12 don't recall destroying any documents  
13 related to solicitations of judgment --  
14 investments in the Ecuador judgment?

15 A. I don't know whether I did or  
16 didn't. I can't definitively say I did  
17 not.

18 You know, there is a constant  
19 concern about confidentiality given what's  
20 happened in the past in this case,  
21 Chevron's attacks on funders, etc. So to  
22 maintain confidentiality, to protect  
23 investors' identity so they won't be  
24 harassed by your law firm and your client,  
25 it is conceivable that I or others deleted



1 DONZIGER

2 e-mails related to certain people.

3 Q. So if you want to keep  
4 information confidential from Chevron such  
5 that Chevron can't discover it during  
6 discovery --

7 A. That wasn't the motivation.  
8 You are putting words in my mouth.

9 Q. Well, do you --

10 A. What's your question?

11 Q. Do you destroy documents in  
12 order to avoid having to produce them to  
13 Chevron?

14 A. No.

15 Q. Have you ever destroyed a  
16 document to avoid having to produce it to  
17 Chevron?

18 A. No.

19 Q. Have you ever suggested to  
20 anyone that they destroy a document to  
21 avoid its production to Chevron?

22 A. No.

23 Q. I'm going to hand the witness a  
24 document previously marked as Plaintiff's  
25 Exhibit 5305.

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(Plaintiff's Exhibit 5305  
marked for identification.)

Q. Mr. Donziger, this is a  
restraining order that Chevron served on  
you on April 16th of 2018.

I'm going to direct your  
attention to page 2 under the heading  
Restraining Notice where the notice says  
"Take Notice that, pursuant to CPLR  
5222(b), which is set forth in full herein,  
you are hereby forbidden to make or suffer  
any sale, transfer or interference with any  
property in which you have an interest, or  
pay over or otherwise dispose of any debt  
owed to you, except as provided in Section  
5222."

Do you see that, sir?

A. Yes.

Q. Have you transferred any  
property in which you had an interest since  
April 16th of 2018?

A. What do you mean by property?  
Like real property?

Q. Money, real property.

1 DONZIGER

2 A. I have continued to pay my  
3 living expenses, but other than that, no.

4 Q. And what are you including in  
5 your living expenses?

6 A. That's beyond the scope.

7 Q. So you won't define what you  
8 mean --

9 A. Living expenses, food,  
10 mortgage, maintenance, entertainment,  
11 school for kid, etc.

12 Q. Other than --

13 A. Garage for car.

14 Q. Other than continuing to pay  
15 what you define as living expenses, have  
16 you transferred any asset since April 16th  
17 of 2018?

18 A. No.

19 Q. I'm going to hand the witness a  
20 document previously marked as Plaintiff's  
21 Exhibit 558.

22 Are you familiar with this  
23 document, Mr. Donziger, your retainer  
24 agreement from January 5th of 2011?

25 A. Yes.

1 DONZIGER

2 Q. Is this agreement still  
3 operative?

4 A. I think there has been a  
5 subsequent agreement.

6 Q. What is the date of the  
7 subsequent agreement?

8 A. I don't know, but it was after  
9 this date.

10 Q. Do you have a copy of the  
11 subsequent agreement?

12 A. I do.

13 Q. And who are the parties to the  
14 subsequent agreement?

15 A. I believe it is the FDA and  
16 myself.

17 Q. Has Exhibit 558 been  
18 terminated?

19 A. I think it's been superseded by  
20 the subsequent agreement.

21 Q. Now, in Exhibit 558, your  
22 clients consist of the individual Lago  
23 Agrio plaintiffs, the FDA, and the UDAPT.  
24 Do you see that?

25 A. Yes.

1 DONZIGER

2 Q. At some point in time you  
3 stopped representing everybody except the  
4 FDA, but you won't say when that point in  
5 time was, correct?

6 A. It's not that I won't say, I  
7 just don't know as I sit here today what  
8 the exact date is.

9 Q. Can you give me an  
10 approximation?

11 A. I think it is about two, three  
12 years, sometime in that time period.

13 Q. And at the time that you --  
14 well, who terminated the relationship as  
15 between you and the UDAPT?

16 A. So I'm going to decline to  
17 answer that question on the grounds that it  
18 really relates to the internal functioning  
19 of the plaintiff class in Ecuador.

20 Q. And who terminated the  
21 relationship as between you and the Lago  
22 Agrio plaintiffs?

23 A. I'm going to decline to answer  
24 that question on the same grounds.

25 Q. Do you have any consent from

1 DONZIGER

2 the Lago Agrio plaintiffs to continue to  
3 represent the FDA but not them in  
4 connection with the Ecuador litigation?

5 A. You mean directly from the  
6 individuals?

7 Q. Yes, sir.

8 A. I don't believe so. It is  
9 possible. I'm not really sure.

10 Q. You don't know as you sit here?

11 A. I don't know. My client is the  
12 FDA, which has consents from individuals,  
13 so whether that would be transferred up to  
14 me, I don't know.

15 Q. Do you have a consent from  
16 Mr. Fajardo, acting on behalf of the Lago  
17 Agrio plaintiffs, to continue to represent  
18 the FDA in this matter but not the Lago  
19 Agrio plaintiffs?

20 A. I don't really understand the  
21 question. I have a relationship to my  
22 client, the FDA, which is the beneficiary  
23 of the judgment. I don't have any consent  
24 from Mr. Fajardo in that regard.

25 Q. Do you have any conflict



1 DONZIGER

2 waivers from the Lago Agrio plaintiffs to  
3 represent exclusively the FDA in connection  
4 with the Ecuador litigation?

5 A. This is really irrelevant to  
6 this deposition, with all due respect. How  
7 is this relevant?

8 Q. Mr. Donziger, you are claiming  
9 to have a valid interest which you are  
10 selling on behalf of --

11 A. What do you mean, valid? You  
12 want to come over here and testify?

13 Q. Mr. Donziger, can you answer  
14 the question?

15 A. You just said claiming I have a  
16 valid interest which I'm selling. I have  
17 never claimed that and that hasn't  
18 happened.

19 Q. Okay.

20 A. The FDA has an interest.

21 Q. Define for me the FDA's  
22 interest in the Ecuador judgment.

23 A. The FDA is the beneficiary of  
24 the judgment responsible for collecting the  
25 money, executing the judgment against

1 DONZIGER

2 Chevron, and spending consistent with the  
3 Ecuador court judgment.

4 Q. Which says it shall be expensed  
5 exclusively for remediation, correct?

6 A. It also allows for the payment  
7 of legal and administrative expenses, so  
8 no, it is not exclusive. What is left  
9 after these various obligations are met  
10 needs to be paid for remediation. So if  
11 you are trying to suggest that raising  
12 money is inconsistent, I disagree with you.

13 Q. Do you have any opinion from,  
14 written opinion, that the FDA has an  
15 exigible interest in the judgment under  
16 Ecuador law?

17 A. The FDA is the beneficiary of  
18 the judgment according to the Ecuador court  
19 judgment. There is no need to get an  
20 opinion. It is so stated in the Ecuador  
21 court judgment.

22 Q. Other than the Ecuador court  
23 judgment, are you relying on anything else  
24 when you say the FDA -- well, let me  
25 withdraw that.

1 DONZIGER

2 Is it your position that the  
3 FDA, acting alone, can contract to give  
4 third parties percentages of the Ecuador  
5 judgment?

6 A. Andrea, your question is -- you  
7 know the answer to that question. I have  
8 already stated my position, okay, before  
9 Judge Kaplan.

10 Q. Then just answer the question,  
11 Mr. Donziger. Stop giving speeches.

12 A. I'm not about speeches, okay?  
13 Ask questions that this deposition is  
14 supposed to be about. Ask Elliott  
15 Management questions, because I'm not going  
16 to sit here all day, I'm just telling you,  
17 and sit here and go through all this.

18 MS. NEUMAN: Can you read the  
19 question back to the witness.

20 A. Ask questions about Elliott.  
21 That is what Judge Kaplan ordered this  
22 deposition for.

23 MS. NEUMAN: Can you read the  
24 question back for the witness, please.

25 (The record was read.)

1 DONZIGER

2 A. I have stated that already  
3 before Judge Kaplan. Yes.

4 Q. And are there any limits on the  
5 FDA's ability to sell percentage interest  
6 in the judgment?

7 A. Stop it. Limits? You know,  
8 I'm not opining on that. It is privileged  
9 and it's beyond the scope. Next.

10 Q. Any solicitations that you've  
11 made for additional funders in the Ecuador  
12 litigation, in making those have you  
13 complied with the provisions of Exhibit  
14 558?

15 A. Oh, lord. What is Exhibit 558,  
16 this (indicating)?

17 Q. Your January 2011 retainer  
18 agreement.

19 A. I'm not answering that  
20 question. I don't know what you're talking  
21 about. You've got to be more specific.  
22 What in the exhibit are you talking about?

23 Q. There is a provision that  
24 discusses when and how additional funders  
25 will be added on page 6, paragraph 3(j),

1 DONZIGER

2 under the heading "The Firm hereby  
3 acknowledges and agrees as follows," and  
4 that's a reference to your firm.

5 A. Okay. If you want me to answer  
6 that I need to sort of read this. I mean,  
7 I haven't read this document for a long  
8 time and, as I said, it's not the current  
9 document.

10 Q. So you're not complying with it  
11 when you are --

12 A. No, I'm not saying I'm not  
13 complying with it. You said that.

14 Q. Let me ask you this: Have you  
15 given --

16 A. Do you want me to read this?

17 Q. No, I will just ask you a  
18 different question. Have you given the  
19 UDAPT notice on the occasions that you have  
20 solicited investments in the judgment for  
21 the FDA?

22 A. It's none of your business.  
23 It's beyond the scope.

24 The UDAPT has no authority. I  
25 don't work for the UDAPT. My client is the

1 DONZIGER

2 FDA, that's who I work for. I give them  
3 notice.

4 Q. Have you given the Lago Agrio  
5 plaintiffs notice?

6 A. The Lago Agrio plaintiffs  
7 generally know what the FDA is doing with  
8 regard to trying to generate resources so  
9 they can continue the case to try to get a  
10 cleanup of the pollution that your client  
11 left on their lands.

12 Q. The question, Mr. Donziger, is  
13 have you given notice to the Lago Agrio  
14 plaintiffs when you have solicited --

15 A. I give notice to my client,  
16 which is the FDA, and the FDA is  
17 responsible for keeping the affected  
18 communities notified, and it's not just the  
19 named plaintiffs, it's the leaders of all  
20 the affected communities. The named  
21 plaintiffs act for everybody who is  
22 affected.

23 Q. So you have had no  
24 communications directly with the individual  
25 Lago Agrio plaintiffs since the entry of

1 DONZIGER

2 the RICO judgment; is that right?

3 A. That's false, that's not right,  
4 but it is also beyond the scope. Please  
5 ask me about Elliott.

6 Q. You have referred to your --

7 A. Let me make a suggestion, okay?

8 Q. Mr. Donziger, I'm not  
9 interested in your suggestions. I'm just  
10 going to ask questions and you can answer  
11 the questions.

12 A. No, you've got to ask questions  
13 relevant to the scope and then I will  
14 answer the questions.

15 Q. I am.

16 A. But what I'm going to do right  
17 now is go to the bathroom, so give me five  
18 minutes, please.

19 MS. NEUMAN: Let's go off the  
20 record at the witness' request.

21 THE VIDEOGRAPHER: The time is  
22 10:42. We are going off the record. This  
23 is the end of media file one.

24 (Recess taken.)

25 THE VIDEOGRAPHER: We are back



1 DONZIGER

2 on the record. The time is 10:50. This is  
3 the beginning of media file number two.

4 BY MS. NEUMAN:

5 Q. Mr. Donziger, do you still have  
6 Exhibit 558 in front of you, your January  
7 2011 retainer?

8 A. Yes.

9 Q. Are there any provisions of  
10 Exhibit 558 that you consider to still be  
11 operative or is the entire agreement  
12 terminated?

13 A. I would have to read through  
14 this and compare it to the subsequent  
15 agreement before I could answer that  
16 question.

17 Q. Well, let's look at paragraph  
18 3(a), Contingent Fee. It says "As  
19 compensation for its services the firm  
20 should be entitled to an Active Lawyer  
21 Percentage of thirty one and one-half  
22 percent of the Total Contingency Fee  
23 Payment. The Total Contingency Fee Payment  
24 means an amount equal to 20 percent of all  
25 Plaintiff Collection Monies."

1 DONZIGER

2 Do you see that?

3 A. Yes.

4 Q. Is that provision still  
5 operative in your view?

6 A. It is beyond the scope.

7 Q. Are the provisions relating to  
8 the monthly retainer on the next page still  
9 operative?

10 A. That is beyond the scope of the  
11 deposition.

12 Q. Are the provisions relating to  
13 budgets, billing and payments still  
14 operative?

15 A. That is beyond the scope.

16 Q. Have any arbitrations been  
17 conducted pursuant to Exhibit 558?

18 A. It is beyond the scope.

19 Q. On page 8 of Exhibit 558 it  
20 says "Following a final non-appealable  
21 order of a court of competent jurisdiction  
22 in respect of such Individual Action that  
23 the Firm or such attorney has committed  
24 actual fraud, professional malpractice or  
25 willful misconduct," then "The Plaintiffs

1 DONZIGER

2 may require that the Firm or such attorney  
3 pay to the Plaintiffs the amount of the  
4 Defense Funds actually paid by the  
5 Plaintiffs to or for the benefit of the  
6 Firm or such attorney, as applicable."

7 Are you familiar with that  
8 provision?

9 A. It is beyond the scope.

10 Q. Was Exhibit 558 terminated in  
11 2013?

12 A. It is beyond the scope; the  
13 scope being the Elliott meeting, just to  
14 reiterate, and my present financial  
15 condition, which I would be more than happy  
16 to answer appropriate questions about, if  
17 you would ask them.

18 Q. I'm going to have marked as  
19 Exhibit 5306 Subscription Deed from  
20 Amazonia Recovery Limited.

21 (Plaintiff's Exhibit 5306  
22 marked for identification.)

23 Q. Mr. Donziger, the last page of  
24 the document before the appendix, this one  
25 (indicating), appears to bear your

1 DONZIGER

2 signature. Is that your signature, sir?

3 A. Yes.

4 Q. And you signed this document to  
5 convert your percentage interest under  
6 Exhibit 558 to shares in Amazonia, correct?

7 A. This is beyond the scope. I  
8 mean, the document obviously speaks for  
9 itself.

10 Q. Have you subsequently  
11 transferred or disposed of your shares in  
12 Amazonia other than sending Chevron a  
13 document, since you signed Exhibit 5306?

14 A. If your question is am I  
15 transferring Amazonia shares to more than  
16 one entity at the same time, the answer is  
17 no. The only transfer I have effectuated  
18 for those shares is the one that you have  
19 that I signed subsequent to the hearing on  
20 May 8th.

21 Q. And have you changed your  
22 interest in Amazonia in any other way since  
23 you executed Exhibit 5306?

24 A. No.

25 Q. And have you done anything with

1 DONZIGER

2 the -- I'll withdraw that.

3 I'm going to mark as Exhibit  
4 5307 defendants' June 15th, 2018 responses  
5 to discovery.

6 (Plaintiff's Exhibit 5307  
7 marked for identification.)

8 Q. You are familiar with these  
9 responses, Mr. Donziger?

10 A. Yes.

11 Q. That is your signature that  
12 appears on the last page of Exhibit 5307?

13 A. Yes.

14 Q. Is everything stated in Exhibit  
15 5307 correct?

16 A. To the best of my knowledge,  
17 yes.

18 Q. In connection with preparing  
19 your responses to Chevron's discovery, did  
20 you research and review any hard copy  
21 documents?

22 A. Yes.

23 Q. Where are those documents  
24 maintained?

25 A. In my office, which is in my

1 DONZIGER

2 home.

3 Q. What's the volume of the  
4 documents that you reviewed, approximately?

5 A. There is a fair number of  
6 documents that I have withheld from you  
7 guys on the basis of privilege or First  
8 Amendment issues or of the pending motions.

9 Q. I'm trying to ask you, though,  
10 the volume of documents that you have.

11 A. Well, when you say volume --

12 Q. That you reviewed.

13 A. Do you mean mass, number of  
14 pages, weight? What do you mean by volume?

15 Q. The number of pages. Or if you  
16 can't estimate that, two boxes, five boxes.

17 A. Bankers boxes?

18 Q. Sure.

19 A. I have reviewed a lot of  
20 documents. I have also requested bank  
21 records.

22 Q. Can you estimate --

23 A. Well, bank records from the  
24 accounts that I specify in my response to  
25 your questions.

1 DONZIGER

2 Q. Can you estimate the volume of  
3 hard copy documents that you reviewed in  
4 responding to Chevron's discovery?

5 A. I don't know. A few hundred  
6 pages, or maybe less, I don't know. It is  
7 basically the universe of my financial  
8 transactions from those accounts since the  
9 judgment, since the RICO judgment.

10 Q. Did you review any electronic  
11 documents --

12 A. Yes.

13 Q. -- in response --

14 A. And e-mails.

15 Q. And how many e-mail accounts do  
16 you have, sir?

17 A. Two.

18 Q. And what are they?

19 A. They are  
20 sdonziger@donzigerandassociates.com and  
21 sdonziger@gmail.com, and there might be an  
22 sdonziger2@gmail, but I think there is  
23 actually, but I haven't used it for a  
24 really long time.

25 Q. So you have two e-mails that



1 DONZIGER

2 you use on a regular basis?

3 A. Yes.

4 Q. And you searched both of those  
5 e-mail accounts for responsive documents?

6 A. Yes.

7 Q. Do you have any other  
8 electronic servers or files that you use  
9 for storage of information?

10 A. Not that I am aware of.

11 Q. Other than searching your  
12 e-mail accounts, did you search any other  
13 electronic information for responsive  
14 documents?

15 A. Well, files on my computer.

16 Q. So Word files?

17 A. Yeah.

18 Q. And how many computers do you  
19 have, sir?

20 A. One.

21 Q. And what type of computer is  
22 it?

23 A. It is an Apple.

24 But to be clear, as I have  
25 stated in this document, Exhibit 5307, I

1 DONZIGER

2 consider your subpoena to me to be  
3 overbroad and unduly burdensome. And I'm  
4 also a sole practitioner with limited time  
5 and limited technical capacity to  
6 effectuate the kind of search that, say,  
7 Chevron would do or you guys would do at  
8 Gibson Dunn on behalf of Chevron.

9 So taking that into account, I  
10 did a fair amount of searching and document  
11 gathering and I have more documents that  
12 you are seeking that I don't believe is  
13 appropriate to turn over at this point  
14 given the sort of outstanding legal issues  
15 that need to be resolved by the Court.

16 Q. And what's the volume of  
17 documents that you are withholding?

18 A. Well, it is a few hundred  
19 pages, but if Judge Kaplan were to order me  
20 to produce everything that you are asking  
21 for, it obviously would be a lot more than  
22 that.

23 Q. And so what is the difference  
24 between the "a lot more" and the few  
25 hundred pages? Because I'm not sure I'm

1 DONZIGER

2 following your train of thought.

3 A. The difference is I have not  
4 searched for documents responsive to every  
5 request in your subpoena. I mean, some of  
6 them, in my personal opinion, would be  
7 impossible to do.

8 So what I thought was most  
9 reasonable, even though I believe this  
10 stuff is privileged or for whatever reason  
11 is intrusive and in violation of my  
12 constitutional rights, I have gathered more  
13 documents. If Judge Kaplan were to order  
14 me to produce them, subject to my rights  
15 and whatever other recourse I would have,  
16 obviously I would be able to do that.

17 Q. So these documents that you  
18 searched for, found and are withholding on  
19 the basis of privilege, you have not  
20 provided a privilege log for those  
21 documents, correct?

22 A. That's correct.

23 Q. And you haven't produced them  
24 under the 502 we agreed to; is that  
25 correct?

1 DONZIGER

2 A. That's correct. But just  
3 remember the 502 -- well, my view of the  
4 whole thing is a lot of this stuff is First  
5 Amendment protected, implicates, you know,  
6 constitutional rights. So it goes beyond  
7 the normal sort of privilege issues. It  
8 goes well beyond that.

9 Q. So you are withholding  
10 non-privileged documents on the basis of a  
11 First Amendment objection?

12 A. I didn't say that.

13 Q. I'm just asking if you are or  
14 you aren't.

15 A. I don't know. I would have to  
16 give that a think. I do know that some of  
17 the documents, many of the documents, are  
18 being withheld on First Amendment grounds.

19 Q. Can you describe for me how you  
20 did your electronic searches? Did you use  
21 particular terms? What was your method?

22 A. Well, for example, for the  
23 Elliott meeting, I put in Elliott Capital,  
24 I put in Katie Sullivan, search terms. I  
25 think the name is Lee Grinwald.

1 DONZIGER

2 Q. Grinberg?

3 A. Grinberg.

4 For bank stuff -- well, that's  
5 not your question.

6 Q. My question was how did you  
7 search for responsive documents?

8 A. Well, that's one thing I did.  
9 I don't really recall -- I don't really  
10 recall -- in e-mail?

11 Q. No, electronically.

12 A. You are talking about e-mail?

13 Q. I'm talking about  
14 electronically.

15 A. I don't know. I put in various  
16 search terms.

17 Q. Do you recall the search terms  
18 you used other than "Sullivan" and  
19 "Elliott"?

20 A. Not really, but I want to be  
21 very, very clear.

22 Q. You need to let me finish my  
23 question because the court reporter can't  
24 get us talking over one another. Go ahead.

25 A. Well, I thought I was talking

1 DONZIGER

2 over you.

3 Q. You were.

4 A. Can you read the question back  
5 or say it again, please?

6 MS. NEUMAN: What was the last  
7 question or part thereof?

8 (The record was read.)

9 A. Well, I was searching for the  
10 Elliott meeting e-mails that I might have  
11 had. You know, I don't recall any other  
12 search terms at this point.

13 Q. Can we turn to Exhibit 5307,  
14 page 3, in response to RFP No. 1 you state  
15 "I do not, to my knowledge, own or control  
16 any foreign assets."

17 Do you see that?

18 A. Yes.

19 Q. Do you have any reason to  
20 believe you would own foreign assets that  
21 you wouldn't be aware of?

22 A. No.

23 Q. You don't have any foreign bank  
24 accounts?

25 A. No.

1 DONZIGER

2 Q. You don't own property in any  
3 foreign country?

4 A. No.

5 Q. You state in the next paragraph  
6 "My bank accounts as follows," and then you  
7 list five TD Bank accounts. Do you see  
8 that?

9 A. Yes.

10 Q. You go on to say "A printout  
11 from the TD website reflecting the current  
12 status of these accounts is attached. I  
13 hereby attest that these are the only bank  
14 accounts I presently use and the only bank  
15 accounts I have used since March 4, 2014."

16 Is that an accurate statement?

17 A. Well, they are the only bank  
18 accounts I presently use. As I read this  
19 now, I will sort of modify it slightly,  
20 because it is possible that other bank  
21 accounts at TD were opened and maybe closed  
22 during that period of time. So maybe there  
23 is another bank account or two, but they  
24 were all sort of part of the same group of  
25 accounts.



1 DONZIGER

2 Q. Well, before stating and  
3 underlining "The only bank accounts I have  
4 used since March 14th, 2014," what  
5 diligence did you do to confirm that  
6 statement?

7 A. Well, I went to my bank and  
8 talked to the person at the bank and said I  
9 need all my accounts since 2014. So I  
10 think that's accurate, but I'm not 100  
11 percent sure.

12 Q. Did you do anything else other  
13 than ask someone at the bank? Did you look  
14 at your own documents, for example?

15 A. Well, I count on the bank to  
16 keep my documents. Just to be clear, and  
17 this is a general matter, if you will allow  
18 me, I work alone, I have no assistant, I  
19 have no associates and I have no secretary,  
20 okay? So a lot of my reliance for document  
21 preservation is on the institutions that I  
22 do business with.

23 Q. Do you do -- you don't work  
24 with Mr. Page?

25 A. We are colleagues, but he

1 DONZIGER

2 doesn't work for me.

3 Q. But he works with you on this  
4 matter?

5 A. We are colleagues, yeah. He  
6 works on the Ecuador matter and he has a  
7 whole host of other cases that he works on.

8 Q. Looking on page 4, RFP response  
9 14, you say "My tax accountant has informed  
10 me that he does not have a copy of my 2014  
11 tax returns."

12 Who are you referring to as  
13 your tax accountant?

14 A. A gentleman by the name of Gary  
15 Greenberg.

16 Q. Mr. Greenberg is located in New  
17 York?

18 A. New York City.

19 Q. How long has he been your tax  
20 accountant?

21 A. Several years, probably at  
22 least ten years, maybe longer.

23 Q. Is he with a particular firm?

24 A. He has his own practice.

25 Q. Did you search your computer

1 DONZIGER

2 for copies of your 2014 tax return?

3 A. No. I don't believe it would  
4 be on my computer. I rely on Mr. Greenberg  
5 to sort of -- to keep my tax records, and  
6 he has requested, as I sit here, the 2014  
7 return, which I will turn over to you when  
8 it comes in.

9 Q. Now, response to RFP 26 on the  
10 next page, you state "The only payments I  
11 have received potentially responsive to the  
12 request are in the nature of remuneration  
13 described in response to ROG3."

14 What do you mean there when you  
15 say "remuneration"?

16 A. I don't -- I need the other  
17 document to see what I'm responding to  
18 here, the subpoena.

19 Q. You mean you want to see the  
20 request?

21 A. Yeah, the request, I'm sorry.

22 Q. Sure. I'm going to mark for  
23 the record as Exhibit 5308 a combined  
24 version of Mr. Donziger's responses and  
25 Chevron's requests.

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DONZIGER

(Plaintiff's Exhibit 5308  
marked for identification.)

A. Okay. So do you have a  
question?

Q. Yes, my question is what do you  
mean when you say "remuneration" in  
response to RFP 26?

A. Payments of money.

Q. Let's turn to page 6 and go to  
ROG3. You state "My only sources of income  
are remuneration authorized by my clients  
and paid out of litigation expense funds  
raised with my assistance, but not based on  
my interest in the Ecuador judgment."  
Do you see that?

A. Yes.

Q. What is your interest in the  
Ecuador judgment?

A. My interest is the percentage  
contingency fee that I have always had  
through the years dating back to the RICO  
trial.

Q. That would be the percentage  
that you were given pursuant to Exhibit

DONZIGER

558?

A. Yes, and I think my retainer.  
558 is the Amazonia document?

Q. No, 558 is the retainer.

A. Okay. I don't know what  
document is the document defining my  
retainer percentage. I believe it is in my  
retainer agreement.

Q. Other than Exhibit 558, which  
is the January 2011 retainer agreement,  
have you signed any other agreements that  
give you a percentage interest in the  
judgment?

A. Look, I already testified to  
that. There is a subsequent agreement.

Q. What are the terms of the  
subsequent agreement --

A. I believe the terms of  
compensation --

Q. You need to let me finish my  
question.

A. Go ahead, I'm sorry.

Q. What are the terms of the  
subsequent retainer that you have

1 DONZIGER

2 exclusively with the FDA?

3 A. In terms of compensation, legal  
4 fees?

5 Q. In terms of your compensation.

6 A. My legal fees, my fees for  
7 service, is that what you are talking  
8 about?

9 Q. I don't know what the terms  
10 are. I'm asking you.

11 A. Well, you've got to be  
12 specific. You want the terms of my legal  
13 fee? My contingency fee interest, is that  
14 what you are asking about?

15 Q. Okay, let's try this: You have  
16 entered into an agreement with the FDA?

17 A. Yes.

18 Q. Several years ago, correct?

19 A. Well, two, three years ago, to  
20 my best recollection.

21 Q. And you can't narrow it down  
22 any more than that?

23 A. Not as I sit here today. I  
24 mean, it has happened relatively in that --  
25 I believe in that time frame.

1 DONZIGER

2 Q. Does this agreement -- is it a  
3 retainer agreement?

4 A. Yes.

5 Q. Is it governed by New York law?

6 A. I can't answer that as I sit  
7 here today. Obviously if I signed it, New  
8 York would be governed by New York ethical  
9 rules and what have you, but I don't know  
10 what the retainer agreement says. I don't  
11 have it in front of me right now.

12 Q. Does the agreement that you  
13 signed with the FDA in the last couple of  
14 years, the retainer agreement, give you a  
15 percentage interest in the judgment, the  
16 Ecuadorian judgment?

17 A. Yes.

18 Q. What is that percentage  
19 interest in the FDA retainer?

20 A. It's the same percentage  
21 interest that I have always had, to the  
22 best of my knowledge, 6.3 percent.

23 Q. And is that 6.3 percent of the  
24 total amount recovered or some other --  
25 what is it 6.3 percent of?

1 DONZIGER

2 A. It is a contingent fee interest  
3 in the recovery, any recovery.

4 Q. The total recovery?

5 A. Yeah, obviously subject to  
6 court orders, like the constructive trust.  
7 So right now, for all practical purposes,  
8 it is a nullity. But that is my interest  
9 according to my contract.

10 Q. The contract you signed with  
11 the FDA, in addition to granting you the  
12 contingency fee interest of 6.3 percent,  
13 does it provide for any other types of  
14 payments to you?

15 A. I don't know. To be clear,  
16 though, I have an agreement with my  
17 clients, that is the FDA, to be paid a  
18 monthly retainer.

19 Q. When did you enter into that  
20 agreement?

21 A. We have always had that  
22 agreement for years. I rarely got paid  
23 because there wasn't enough money, and I  
24 occasionally got paid.

25 THE VIDEOGRAPHER: Excuse me, I



1 DONZIGER

2 was informed that we're not on the phone  
3 right now.

4 MS. NEUMAN: It's fine. We  
5 will worry about it at the break.

6 THE WITNESS: I'm sorry, is  
7 this phone --

8 MS. NEUMAN: It is just into  
9 that other room.

10 THE WITNESS: Okay. Have you  
11 got a big crowd over there?

12 MS. NEUMAN: No takers as far  
13 as I know.

14 THE WITNESS: Not like the good  
15 ole days.

16 MS. NEUMAN: Can you read me  
17 back the last question. I think he  
18 answered it, but I have lost my train of  
19 thought.

20 (The record was read.)

21 Q. Is the agreement that you  
22 receive a retainer from the FDA written?

23 A. I believe there is a written  
24 agreement from well back, but I'm not 100  
25 percent sure. Certainly we had an

1 DONZIGER

2 agreement, an oral agreement.

3 Q. And is this agreement that you  
4 receive a retainer for working for the FDA  
5 reflected in your new FDA retainer?

6 A. I don't know an answer to that  
7 because I haven't looked at that retainer  
8 in preparation for this deposition.

9 Q. In this agreement that you have  
10 with the FDA to receive a retainer, what is  
11 the amount of the retainer?

12 A. It varies. Right now, or the  
13 most recent iteration, was \$25,000 a month.

14 Q. And is there any document  
15 confirming that that's your current  
16 retainer amount that is signed by the FDA?

17 A. I don't know, but there is a  
18 definite agreement with the FDA. But I  
19 will say this: I generally don't get paid  
20 that amount or get paid anything at all.  
21 It all depends on what's available,  
22 especially given the rather burdensome, for  
23 my client base, demands of the litigation  
24 in different jurisdictions, you know, not  
25 just this, but Canada and other countries.

1 DONZIGER

2 Q. What is your role in the  
3 Canadian case, if any?

4 A. How does that relate to the  
5 deposition?

6 Q. It relates to whether monies  
7 you are receiving are for compensation of  
8 work done in Canada or something else.

9 A. Well, I get the retainer for a  
10 variety of different pieces of work that I  
11 do, but I'm not going to get into that on  
12 First Amendment grounds and because of the  
13 pending motion.

14 Q. Can you describe the scope of  
15 the work you do that is covered by the  
16 retainer?

17 A. I believe that intrudes on  
18 First Amendment protected grounds, but I  
19 will say this as a general matter: I do a  
20 variety of different types of work on  
21 behalf of my clients, advocacy work.

22 Q. You keep saying clients,  
23 plural, but it is client, right, the FDA?

24 A. Well, the FDA represents all  
25 the affected communities in the execution

1 DONZIGER

2 of the judgment, so there is thousands of  
3 people that the FDA represents, and I  
4 represent the FDA.

5 Q. Have the indigenous communities  
6 stated publicly that the FDA does not  
7 represent them?

8 A. You would have to be more  
9 specific. What indigenous communities?

10 Q. Well, which indigenous  
11 communities are in the former  
12 concessionary?

13 A. You don't know that?

14 Q. I'm asking you, Mr. Donziger.

15 A. There is five indigenous  
16 peoples.

17 Q. And they are?

18 A. The Siona, Secoya, Huaorani,  
19 Quichua, and Cofan.

20 Q. And is it your testimony that  
21 the FDA currently represents all five of  
22 those --

23 A. The FDA --

24 Q. -- indigenous communities?

25 A. The FDA represents all the

DONZIGER

beneficiaries of the judgment in the execution of the Ecuadorian judgment, so yes, it would include those groups for that purpose.

Q. For the purpose of managing the funds should they ever be paid?

A. Well, for the purpose that the Ecuadorian judgment sets out as to be the role of the FDA. So it is, you know, the FDA is the beneficiary, they have an obligation to collect on the judgment, and then if funds ever get collected, to spend them consistent with the Ecuador judgment.

Q. Can you turn in Exhibit 5307 to page 7, your response to Interrogatory No. 16.

A. Uh-huh.

Q. You say "It would be highly burdensome to calculate the total amount of money I have received in the 25 years of my work on the Ecuador case."

Do you see that?

A. Yes.

Q. Did you declare all the money

1 DONZIGER

2 that you received for your work on the  
3 Ecuador case as taxable income?

4 A. Well, I declare all income  
5 received from any source as taxable income  
6 if that's what the law states.

7 Q. So that's a yes?

8 A. Yes.

9 Q. So if you looked at your tax  
10 returns, you would be able to calculate the  
11 amount of money you received from working  
12 on the Ecuador case?

13 A. Subject to applicable  
14 deductions, out of pocket expenses, etc.,  
15 yes, perhaps, I don't know, I'm not a tax  
16 expert.

17 Q. Do you have any accountings for  
18 the monies that you have received in  
19 reimbursement for expenses on the Ecuador  
20 case?

21 A. I have a fair amount of  
22 accountings through the years, but they're  
23 not complete.

24 Q. By a fair amount of  
25 accountings, how many is that?

1 DONZIGER

2 A. I don't know. I mean, we are  
3 talking 25 years, so it is a massive amount  
4 of material, and I have an accounting, it's  
5 not complete, it's substantially complete,  
6 but it's not complete.

7 Q. And who prepared this  
8 accounting that is substantially complete?

9 A. Different people.

10 Q. Can you identify them, please?

11 A. I feel like this is intruding a  
12 bit on the First Amendment issue. I will  
13 answer it, though, because you already  
14 know. So the person who originally put  
15 this together was Josh Rizack and then  
16 subsequent to Josh, who didn't complete it,  
17 but he got a fair amount down the road with  
18 it, we hired Katie Sullivan to complete it.

19 Q. You retained Ms. Sullivan to  
20 prepare your accounting for the Ecuador  
21 case?

22 A. I retained Ms. Sullivan to do a  
23 number of different tasks, mostly to help  
24 fundraise, but also to provide sort of  
25 backup admin support to the case and to the

1 DONZIGER

2 people on the case who needed it.

3 Q. When did you retain  
4 Ms. Sullivan?

5 A. You are kind of moving into  
6 that area now? You want to talk about  
7 Ms. Sullivan?

8 Q. When did you retain  
9 Ms. Sullivan?

10 A. This is beyond the scope of the  
11 deposition.

12 Generally, okay, I will answer  
13 your question, because it is narrow, I  
14 retained Ms. Sullivan on behalf of the FDA  
15 in approximately October of last year.

16 Q. 2017?

17 A. Yes.

18 Q. Do you have any written  
19 agreement with Ms. Sullivan or her company?

20 A. There is a draft of an  
21 agreement, but I don't believe that it was  
22 executed, although I'm not sure.

23 Q. And other than fundraising and  
24 preparing accountings for you and your  
25 firm, any other functions Ms. Sullivan was



1 DONZIGER

2 hired to perform?

3 A. I'm not going to answer that  
4 question. That is First Amendment  
5 protected.

6 Q. This accounting that is  
7 substantially complete, what year does it  
8 go through?

9 A. It is beyond the scope of the  
10 deposition.

11 Q. Did you review the accounting  
12 in responding to Chevron's discovery  
13 responses?

14 A. Not fully, no.

15 Q. What does that mean, not fully?

16 A. Well, there is an extensive  
17 accounting and there are summaries. I did  
18 look at a summary.

19 Q. Of the Ecuador case matter?

20 A. It is relative to your  
21 question.

22 Q. And is the summary that you  
23 looked at a document that you produced or  
24 one that you just reviewed?

25 A. No, I did not produce, and the

1 DONZIGER

2 reason I didn't produce it is because I  
3 believe it is First Amendment protected,  
4 subject to the resolution of our pending  
5 motion for a protective order.

6 (Plaintiff's Exhibit 5309  
7 marked for identification.)

8 Q. I'm going to mark as Exhibit  
9 5309 a series of documents bearing the  
10 Bates numbers DONZPJD 1 through 18.

11 A. Can we take a quick break?

12 Q. We can go off the record.

13 THE VIDEOGRAPHER: The time is  
14 11:26. We are going off the record. This  
15 is the end of media file number two.

16 (Recess taken.)

17 THE VIDEOGRAPHER: We are back  
18 on the record. The time is 11:34. This is  
19 the beginning of media file number three.

20 BY MS. NEUMAN:

21 Q. Mr. Donziger, you are still  
22 under oath.

23 A. Yes.

24 Q. I turn your attention to  
25 Exhibit 5309. These are the documents that

1 DONZIGER

2 you produced in response to Chevron's  
3 discovery request, correct?

4 A. Yes.

5 Q. On the first page are listed  
6 five TD Bank accounts. Do you see that?

7 A. Yes.

8 Q. Other than to pay living  
9 expenses, did you transfer any funds out of  
10 any of these accounts since April 16th of  
11 2018?

12 A. April 16th of 2018?

13 Q. When you got the restraining  
14 order.

15 A. Oh. I have. Oh, other than  
16 pay living expenses? Yes.

17 Q. For what purpose?

18 A. To pay case expenses.

19 Q. Which of these accounts relates  
20 to the Ecuador case?

21 A. Well, as a general matter,  
22 the -- as a general matter Ecuador case  
23 funds are not kept generally by me. They  
24 were kept by Ms. Sullivan until recently  
25 when she received a subpoena. The account

1 DONZIGER

2 that relates to the Ecuador case is 8132.

3 Q. The TD Premier Checking?

4 A. Uh-huh.

5 Q. Any of the other accounts  
6 relate to the Ecuador case?

7 A. Well, as a general matter, I  
8 think on occasion have used some of the  
9 other accounts to pay Ecuador case expenses  
10 from time to time.

11 Q. Have you deposited funds,  
12 client funds, into any of these accounts  
13 other than 8132?

14 A. I believe so, yes.

15 Q. Which ones?

16 A. Well, hold on. What do you  
17 mean by client funds?

18 Q. Funds belonging to your client.

19 A. Well, funds that have been  
20 raised to pay litigation expenses have been  
21 transferred into these accounts by others  
22 and they have subsequently been used to pay  
23 case expenses to others, that is  
24 transferred back out to various people.  
25 And I can't say because I'm not the most

1 DONZIGER

2 organized person when it comes to this, but  
3 it is possible that that has happened in  
4 all of these accounts at one time or  
5 another. And the Ecuador case account was  
6 just opened relatively recently because of  
7 a situation with Ms. Sullivan.

8 Q. What does that mean?

9 A. That she didn't want to handle  
10 the funds anymore.

11 Q. So you have taken money raised  
12 in connection with the Ecuador judgment  
13 that is intended to pay case expenses to  
14 persons other than yourself and deposited  
15 it into the accounts shown on the first  
16 page of Exhibit 5309?

17 A. Yes, from time to time, I have  
18 done that, because that's where the money  
19 was held to be able to fund the case.

20 Q. And you have deposited these  
21 case monies into these accounts which also  
22 contained personal money of yours; is that  
23 right?

24 A. Sometimes I have used the  
25 accounts, again, because I'm not very

1 DONZIGER

2 organized, as accounts to hold funds that  
3 have been subsequently transferred out to  
4 other people to pay case expenses, yes.

5 Q. So am I understanding you that  
6 you have commingled case funds with your  
7 personal funds?

8 A. No. Commingle is your word.

9 Q. Well, you have put them in the  
10 same account, the money, yes?

11 A. It's not commingling as far as  
12 I'm concerned. That's an opinion that  
13 you're expressing.

14 You know, the money comes in.  
15 We almost never have enough money to meet  
16 the need and all the bills, and it has to  
17 be then sent out in a way to keep the case  
18 going. I have done that through the years  
19 from time to time.

20 Q. And you keep accurate records  
21 of all the case money that comes in and all  
22 the case money that flows out, is that  
23 right, of your accounts?

24 A. The records are all electronic  
25 and easily retrievable. I had brought in

1 DONZIGER

2 Ms. Sullivan to help get it organized and  
3 up to speed and pick up where Mr. Rizack  
4 left off.

5 Q. Is there any one of these five  
6 accounts that is used exclusively for the  
7 Ecuador case and does not contain any of  
8 your personal funds?

9 A. 8132.

10 Q. So that's exclusive to the  
11 case?

12 A. Yes.

13 Q. Other than these accounts, are  
14 there other accounts that you control and  
15 to which Ecuador case funds have been  
16 deposited?

17 A. That is beyond the scope. Are  
18 you inquiring as to my present financial  
19 condition? Is that what this is about?

20 Q. I'm asking you if there are  
21 other accounts where Ecuador case funds --

22 A. Currently -- let me answer your  
23 question --

24 Q. That you control.

25 A. Let me answer your question

1 DONZIGER

2 this way: As I sit here today, there are  
3 no other accounts.

4 Q. Did you direct -- did anyone  
5 other than you direct Ms. Sullivan's work  
6 on the Ecuador case?

7 A. That is beyond the scope.

8 Q. Did you control the accounts  
9 into which Ecuador case funds were  
10 deposited that Ms. Sullivan opened?

11 A. So my position on that is this:  
12 It is beyond the scope. And the reason it  
13 is beyond the scope, and to be clear, there  
14 is nothing I would try to hide as regards  
15 Ms. Sullivan, except for the fact that that  
16 is internal operational information as to  
17 how we operate, and you're not entitled to  
18 that information, in my view, based on the  
19 motion filed for the protective order. So  
20 I'm not going to answer that question right  
21 now.

22 Q. The case funds -- I withdraw  
23 that.

24 The funds that you have raised  
25 in exchange for interest in the judgment



1 DONZIGER

2 since March of 2014, who owns those funds?

3 A. Well, first of all, I helped my  
4 clients raise money. So when you say funds  
5 you have raised, I don't know what you mean  
6 by that. These are funds that clients  
7 generate and I help make introductions and  
8 help make stuff happen so the clients can  
9 have resources. So they are client funds.

10 Q. When you say client funds, you  
11 mean FDA funds?

12 A. Yes.

13 Q. Okay. And are they deposited  
14 into FDA accounts in Ecuador or somewhere  
15 else?

16 A. That's none of your business.  
17 I mean, that is beyond the scope.

18 Q. Do you have any control over  
19 these funds after they are raised?

20 A. The clients control the funds.  
21 I am authorized by the clients to manage a  
22 bunch of the work and the case and figure  
23 out how to keep it moving.

24 Q. Are you authorized by the  
25 clients to manage the funds?

1 DONZIGER

2 A. I have a say in how the funds  
3 are spent and we talk constantly,  
4 regularly, the clients and I, the  
5 leadership of the FDA, about how to deploy  
6 the limited capital that we have.

7 Q. And who are you referring to as  
8 the leadership of the FDA, by name?

9 A. Beyond the scope. It is public  
10 information who the president of the FDA  
11 is.

12 Q. Is that who you talk to, the  
13 current president of the FDA?

14 A. One of the people. There is an  
15 Executive Committee. There is multiple  
16 people who are involved. But that gets to  
17 the decision-making process of the client  
18 group.

19 Q. Are you authorized to approve  
20 your own compensation from client funds?

21 A. No.

22 Q. Are you authorized to approve  
23 your own expenses from client funds?

24 A. All of my approvals for  
25 expenses are approved by the clients,

1 DONZIGER

2 subject to review, approval, criticism,  
3 etc. I do not have to get approval in  
4 advance for every expenditure of funds for  
5 travel, that kind of stuff.

6 Q. You get written approval --

7 A. No, I don't get approval in  
8 advance. I review expenditures with  
9 clients on a regular basis so they  
10 understand how the money, the limited  
11 capital, is being spent.

12 Q. And that's done in writing?  
13 You account to the clients in writing on  
14 how you have spent the money?

15 A. I think this is well beyond the  
16 scope of the deposition. I have -- let me  
17 just say this: I have regular  
18 communication with my clients about all  
19 sorts of matters, including expenditure of  
20 funds, that kind of stuff.

21 Q. And is that communication ever  
22 in writing?

23 A. I wouldn't say never, but  
24 generally not.

25 Q. You said that Ms. Sullivan had

1 DONZIGER

2 an account in which case funds were held  
3 until she received the subpoena; did I  
4 understand that correctly?

5 A. Yes.

6 Q. What happened to those funds?  
7 Were they transferred to you?

8 A. The answer, and I'm sure she  
9 will provide this in her deposition, given  
10 her production that I briefly reviewed last  
11 night, the money that she had and was  
12 holding when she decided to no longer be  
13 involved, was transferred to a third party,  
14 not me.

15 Q. And who was this third party?

16 A. It is beyond the scope.

17 Q. And how much money was  
18 transferred?

19 A. Beyond the scope.

20 Q. Can you explain to me how  
21 documents relating to your compensation and  
22 expenses can be beyond the scope?

23 A. They indicate internal  
24 operational and strategic issues.

25 Q. Just how much you're paid?

1 DONZIGER

2 A. Huh?

3 Q. How much you're paid?

4 A. That would implicate First  
5 Amendment considerations.

6 Q. Can you define for me this  
7 First Amendment objection? Because you  
8 seem to apply it to financial documents,  
9 all kinds of documents. So I'm not  
10 understanding it. Can you describe it for  
11 the record, please?

12 A. No, I'm not going to describe  
13 it. Read it. I have a 24-page motion. It  
14 really goes into a long history of how  
15 Chevron takes information about people who  
16 work on the case, harasses them, spies on  
17 them, sues them, extorts them, tries to get  
18 statements from them that I'm a bad person,  
19 all those things. So I think I have ample  
20 reason, with all due respect, to be very  
21 concerned about this and to take the  
22 position I'm taking.

23 Q. How are documents related to  
24 your, not related to anybody else, your  
25 compensation and your expenses, how do

1 DONZIGER

2 those documents implicate the First  
3 Amendment?

4 A. Well, let me just say this:  
5 The scope of this deposition is whether I  
6 can pay a judgment. Does Chevron want this  
7 judgment paid or do they just want to sort  
8 of use it as an excuse to find out about my  
9 business?

10 MR. NEUMAN: Can you read back  
11 the pending question to the witness. I  
12 think he has lost track of it.

13 (The record was read.)

14 A. Well, they are also beyond the  
15 scope of the deposition.

16 Q. That is one of the questions,  
17 Mr. Donziger, do they or don't they  
18 implicate the First Amendment?

19 A. I believe they also implicate  
20 the First Amendment as they relate to  
21 decisions about deployment of limited  
22 resources across service providers and  
23 lawyers.

24 Q. If you could turn to Exhibit  
25 5309 with the Bates stamp page 16. It is

1 DONZIGER

2 an e-mail chain among yourself, Lee  
3 Grinberg, and Katie Sullivan. Some of the  
4 e-mails also have Jesse Cohn on them. It  
5 is three pages. Do you see that?

6 A. Yes.

7 Q. These are the only documents  
8 you produced related to the Elliott  
9 meeting, correct?

10 A. Yes.

11 Q. Do you have other e-mails that  
12 discuss the meeting with Elliott either  
13 before or after it took place?

14 A. Well, I have realized now with  
15 Katie Sullivan's production there are some  
16 other e-mails that I obviously missed in my  
17 search. So yes, I do have other e-mails.

18 Q. But those e-mails --

19 A. I don't believe I have anything  
20 beyond what Katie Sullivan produced and I  
21 produced.

22 Q. And is it your testimony that  
23 these other e-mails that Ms. Sullivan  
24 produced that you didn't, did not come up  
25 in response to your search of your e-mail

1 DONZIGER

2 when you searched for Ms. Sullivan's name?

3 A. I don't know. I had a  
4 recollection of an e-mail string that took  
5 place right around the meeting and then  
6 some subsequent e-mails, like what I  
7 produced, and so when I searched and found  
8 that string of e-mails, I thought that was  
9 the production, because I didn't remember  
10 very many e-mails at all from Elliott.  
11 Subsequent to that, last night, when I got  
12 Katie Sullivan's production, I realized  
13 there were a few more e-mails that didn't  
14 come up in my search.

15 Q. So when you searched your  
16 computer, these are the only e-mails, for  
17 Katie Sullivan's name, these are the only  
18 e-mails that came up related to Elliott?

19 A. Yeah, related to Elliott.

20 Q. Did you destroy any e-mails?

21 A. No, I did not.

22 Q. So they are still on your  
23 computer? They haven't been deleted?

24 A. As far as I know.

25 Q. You are sure?



1 DONZIGER

2 A. Well, there is an e-mail  
3 with -- are you trying to play a little  
4 tricky here? I know there is an e-mail  
5 that was deleted, okay? There was no order  
6 that it be preserved. And as I testified  
7 earlier, it was to protect the  
8 confidentiality of a process that we were  
9 engaged in with Elliott Capital Management  
10 at the time, the e-mail being an e-mail  
11 Katie Sullivan sent around about her  
12 enthusiasm of having got a meeting with  
13 Elliott Capital Management. So I believe  
14 that was deleted.

15 Q. By you?

16 A. I don't know. As I said, my  
17 practice is not to delete, but on occasion  
18 I will if it is needed to protect  
19 confidentiality. It is not to avoid  
20 discovery to Chevron, it is to protect the  
21 funding process so the case can continue  
22 and not be harassed out of existence by  
23 your client.

24 Q. I'm going to mark as Exhibit --  
25 well, it is already marked as Exhibit 9 to

1 DONZIGER

2 the Sullivan -- Exhibit 9 to the Sullivan  
3 deposition.

4 A. Can we take a -- go off the  
5 record for a second?

6 Q. Why?

7 A. Because I need to ask  
8 something. Or we can do it on the record.

9 Q. That's fine.

10 A. Has Ms. Sullivan been deposed?

11 Q. Yes.

12 A. When was she deposed?

13 MS. CHAMPION: Thursday.

14 THE WITNESS: I'm kind of not  
15 happy that I was not informed that she was  
16 being deposed or had an opportunity to be  
17 present.

18 MS. CHAMPION: As she is your  
19 agent, we assumed that she would inform  
20 you.

21 THE WITNESS: Do you have a  
22 transcript of her deposition that you can  
23 give me, please?

24 MS. CHAMPION: You can order it  
25 from the court reporter. I will give you

1 DONZIGER

2 the information.

3 Q. Mr. Donziger, can I direct your  
4 attention to Sullivan Exhibit 9.

5 A. I need to take a break.

6 MS. NEUMAN: Go off the record.

7 THE VIDEOGRAPHER: The time is  
8 11:54. We are going off the record.

9 (Recess taken.)

10 THE VIDEOGRAPHER: The time 12  
11 p.m. We are back on the record.

12 BY MS. NEUMAN:

13 Q. Mr. Donziger, you have Sullivan  
14 Exhibit 9 in front of you?

15 A. Yes.

16 Q. This is an e-mail string  
17 bearing the Bates numbers MKS 90 through  
18 94.

19 If you go to page 93, which is  
20 the last substantive page of the exhibit.  
21 Do you have that, sir?

22 A. Yes.

23 Q. It is an e-mail from Katie  
24 Sullivan dated November 6th, 2017 to a  
25 series of people CC'd to you.

1  
2  
3  
4  
5  
6  
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9  
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11  
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25

DONZIGER

Who is L. Fontaine?

A. It is beyond the scope. That is so beyond the scope. Are you kidding me? Ask me questions about my finances --

Q. Mr. Donziger, please stop giving me a speech.

A. I'm not speechifying. I mean, I'm not going to sit here all day while you go on this major fishing expedition, okay? That's not what this deposition is about. I'm not going to go through who each member of our team is and what they do.

Q. So you are refusing to identify the persons --

A. I'm not answering questions beyond the scope of the deposition. That's what I'm doing.

Q. You are refusing to identify the persons listed in the to line of the e-mail exchange that's been marked as Sullivan Exhibit 9, correct?

A. I'm not answering questions that go beyond the scope, and you know you already have that information from your

1 DONZIGER

2 deposition of Ms. Sullivan, so move on to  
3 the topics at hand, please.

4 Q. You respond to Ms. Sullivan's  
5 e-mail which reports on the potential  
6 Elliott meeting saying "Friends, please  
7 keep this information that Katie sent  
8 strictly confidential. As with most  
9 institutional investors, this is a heavy  
10 lift," and so on.

11 Do you see that?

12 A. Yes.

13 Q. And who were you asking them to  
14 keep the information confidential from?

15 A. That's beyond the scope. Stop  
16 it. Please focus on the topics.

17 Q. Now, in response to your  
18 e-mail, Peter Grant --

19 A. Andrea, I'm not answering these  
20 questions.

21 Q. Mr. Donziger, I'm going to ask  
22 the questions --

23 A. Listen, I'm not going to sit  
24 here if you continue to harass me with  
25 questions which have nothing to do with

1 DONZIGER

2 this deposition.

3 Q. I'm not harassing you.

4 A. You are harassing me.

5 Q. These clearly relate to the  
6 Elliott meeting. You have said repeatedly  
7 the Elliott meeting is at issue. You  
8 wanted to get to the Elliott meeting. So  
9 here we are, we are at the Elliott meeting.

10 Mr. Grant says "I give you very  
11 best wishes on this and will now delete all  
12 e-mails relating to this. I recommend  
13 others do as well after what I saw the  
14 opposition has acquired."

15 Do you see that?

16 A. I am not answering these  
17 questions. You can ask me questions about  
18 the Elliott meeting. This is not about the  
19 Elliott meeting. This is about an e-mail  
20 exchange.

21 Q. Did you delete this e-mail from  
22 your computer, Mr. Donziger?

23 A. I don't know. You have already  
24 asked that question. I don't know if I did  
25 or didn't.

1 DONZIGER

2 Q. Did you understand Mr. Grant  
3 when he referred to the opposition to be  
4 referring to Chevron?

5 A. I am not answering these  
6 questions. Ask me about the meeting.

7 Q. On the first page of Sullivan  
8 Exhibit 9 you write "I second that. Please  
9 delete all e-mails related to this and,  
10 again, keep the info confidential."

11 Do you see that?

12 A. Yes.

13 Q. And that's an e-mail you sent  
14 on November 6th, 2017 to the person that is  
15 indicated?

16 A. Beyond the scope. But I will  
17 answer it. Yes, I sent that e-mail.

18 Q. Do you know whether people  
19 deleted --

20 A. No.

21 Q. -- the documents in response to  
22 your instruction to do so?

23 A. No.

24 Q. Did you take any notes at the  
25 Elliott meeting?

1 DONZIGER

2 A. I believe I did, but I don't  
3 know for sure.

4 Q. You didn't produce any notes.  
5 Is there a reason you didn't produce your  
6 notes?

7 A. I probably didn't keep them. I  
8 have literally dozens and dozens of  
9 meetings. I don't keep all my notes. I'm  
10 one person.

11 Q. Did you look for your notes for  
12 the Elliott meeting?

13 A. I did. I have tons of paper  
14 all over the place. There were no notes  
15 from the Elliott meeting. I think I barely  
16 took any notes. I might have taken a few  
17 notes. But I remember generally what  
18 happened at the meeting if you want to ask  
19 me about it.

20 Q. So if you took notes, they no  
21 longer exist?

22 A. I looked for them and there  
23 were no notes I found. My guess is I threw  
24 them out, because I have lots of notes.

25 Q. Other than the e-mail exchange



1 DONZIGER

2 that you produced and the e-mail exchange  
3 that was marked as Sullivan Exhibit 9, did  
4 you have any other e-mail communications  
5 with anyone relating to the Elliott  
6 meeting?

7 A. I don't know.

8 Q. Did you search for such  
9 communications?

10 A. I did. I already answered that  
11 question. I came up with this e-mail  
12 string, because that's all that I  
13 remembered. The meeting really was one  
14 meeting of lots of meetings I had with lots  
15 of people. It didn't strike me as terribly  
16 significant. It was one meeting on one  
17 day.

18 Q. So when you searched your  
19 computer for Elliott, no other documents  
20 came up?

21 A. That were relevant to this, no,  
22 that I remember.

23 Q. That related to the Elliott  
24 meeting?

25 A. No.

1 DONZIGER

2 Q. And you don't recall e-mailing  
3 with anybody else about the Elliott  
4 meeting?

5 A. What do you mean, anybody else?  
6 You mean other than the e-mails that Katie  
7 Sullivan has produced and I produced?

8 Q. Yes.

9 A. No.

10 Q. Did you send any written  
11 information to your client about the  
12 Elliott meeting?

13 A. I don't recall.

14 Q. Did you look for such  
15 communications?

16 A. I looked up Elliott with the  
17 search term and that's what came up. I  
18 don't remember sending my clients any  
19 written information about the Elliott  
20 meeting.

21 Q. Either before or after?

22 A. I don't remember. I don't  
23 believe I did.

24 Q. I'm going to mark as Exhibit  
25 5310 a document bearing the Bates number

1 DONZIGER

2 MKS 396.

3 (Plaintiff's Exhibit 5310  
4 marked for identification.)

5 Q. It is labeled "Invoice, Law  
6 Offices of Steven H. Donziger," described  
7 as "Legal and Consultation Services/Ecuador  
8 Environmental Case, December 2017."

9 This is a document you  
10 prepared, Mr. Donziger?

11 A. Yes.

12 Q. This is the earliest invoice  
13 from you that Ms. Sullivan produced. Did  
14 you send her invoices prior to December  
15 2017?

16 A. I believe this is beyond the  
17 scope.

18 Q. Did you send this invoice to  
19 Ms. Sullivan in order to have it paid?

20 A. It is beyond the scope.

21 Q. Is there any backup for this  
22 invoice or is this the retainer you  
23 mentioned earlier?

24 A. It is the monthly retainer.

25 Q. Did you copy this invoice to

1 DONZIGER

2 the U.S. representative under Exhibit 558?

3 A. Beyond the scope.

4 Q. Who is currently the U.S.  
5 representative acting under Exhibit 558?

6 A. Is Exhibit 558 the retainer  
7 agreement?

8 Q. The January 2011 retainer.

9 A. It is beyond the scope.

10 Q. At the time of the RICO trial,  
11 I believe you testified it was Mr. Snyder.  
12 Is it still Mr. Snyder?

13 A. I don't even know who that is.

14 Q. Andres Snyder.

15 A. Oh. Beyond the scope.

16 Q. Is there currently a chairman  
17 serving pursuant to Exhibit 558?

18 A. It is beyond the scope. I  
19 already testified there is a subsequent  
20 agreement to that.

21 Q. But only with the FDA?

22 A. Yes.

23 Q. Can you produce that agreement?

24 A. I will see what I can do.

25 Q. Well, you have the agreement,

1 DONZIGER

2 right?

3 A. I should somewhere, yeah.

4 Q. Can you produce it today?

5 A. I don't believe so.

6 Q. Why not?

7 A. Because I would have to go back  
8 to my place and find it and -- I might be  
9 able to produce it today, if you let me out  
10 of here.

11 MS. CHAMPION: Someone can  
12 e-mail it to you and we can print it for  
13 you.

14 THE WITNESS: Someone? Who is  
15 going to do that, my dog? Who is going to  
16 e-mail it to me? Do you know I work alone?

17 Q. You mentioned, Mr. Donziger,  
18 that you had a draft agreement with  
19 Ms. Sullivan?

20 A. Yes.

21 Q. Who drafted that agreement, her  
22 or you or someone else?

23 A. This is beyond the scope. I  
24 thought we were going to talk about the  
25 Elliott meeting.

1 DONZIGER

2 Q. Mr. Donziger, did you draft the  
3 tentative agreement with Ms. Sullivan or  
4 did she?

5 A. It is beyond the scope.

6 Q. Do you have a copy of it?

7 A. I believe I do.

8 Q. Pursuant to that agreement, was  
9 Ms. Sullivan to receive any kind of a  
10 percentage interest in the judgment?

11 A. Beyond the scope.

12 Q. Was she or wasn't she?

13 A. It is beyond the scope.

14 Q. Is there any -- well, what is  
15 the reason the agreement didn't get signed?

16 A. It is beyond the scope. I'm  
17 not talking about that.

18 Q. Exhibit 5310, your December  
19 2017 invoice for \$25,000, did that get  
20 paid?

21 A. It is beyond the scope.

22 Q. Money you received is beyond  
23 the scope?

24 A. Yes. You need to know my  
25 present financial condition, my ability to

1 DONZIGER

2 pay a judgment I owe your client, which I  
3 can pay, okay?

4 So quit trying to find out  
5 everything about my life and about the  
6 case, stuff that you have no right to. You  
7 really need to ask questions about the  
8 topics at hand. Do you want to know what  
9 happened at the Elliott meeting? Ask me.  
10 That's what Judge Kaplan wanted this  
11 deposition to be about. You haven't asked  
12 me one question. We are now over two  
13 hours --

14 Q. This is a discovery deposition,  
15 Mr. Donziger.

16 A. You haven't asked one question  
17 about what Judge Kaplan ordered this  
18 deposition to be about.

19 Q. I'm going to hand you a  
20 document that has been marked as  
21 Plaintiff's Exhibit 5311.

22 (Plaintiff's Exhibit 5311  
23 marked for identification.)

24 Q. Bearing the Bates number MKS  
25 395. It shows a transfer from CWP

1 DONZIGER

2 Associates to yourself on January 24th,  
3 2018 of \$25,000. Do you see that?

4 A. Yes.

5 Q. Do you know what the origin of  
6 these funds was?

7 A. This is beyond the scope.

8 Q. Did the \$25,000 that was paid  
9 to you from CWP Associates come from money  
10 raised in exchange for an interest in the  
11 Ecuador judgment?

12 A. These were obviously case  
13 funds.

14 Q. That's not responsive. Did the  
15 money come from --

16 A. From interest in the Ecuadorian  
17 judgment not owned by me, owned by the FDA  
18 and the clients.

19 Q. When were the monies that were  
20 paid to you on January 24th of 2018 raised?

21 A. No, nice try. Beyond the  
22 scope, First Amendment protected.

23 Q. Pursuant to what agreement were  
24 the monies paid to you on January 24th,  
25 2018 raised?



1 DONZIGER

2 A. I have, as I testified, and  
3 please really get to the point, I have  
4 already testified I have authority from the  
5 FDA to try to help them raise money to pay  
6 litigation expenses. I have authority from  
7 my client. It is clear. I had authority.

8 Q. It is clear in this document  
9 that you haven't produced?

10 A. Don't worry about it. It is  
11 none of your business. It is beyond the  
12 scope of the deposition. If Judge Kaplan  
13 wants you to have that, we will get that  
14 resolved in due course and you will get it.

15 Q. Was anyone other than  
16 Ms. Sullivan notified of this transfer of  
17 funds to you on January 24th of 2018?

18 A. It is beyond the scope.

19 Q. What is CWP Associates?

20 A. I don't know.

21 Q. You have no idea?

22 A. It is some name I think  
23 Ms. Sullivan came up with.

24 Q. Did she come up with it or did  
25 you?

1 DONZIGER

2 A. None of your business, and I  
3 don't know, and I don't care, and it is so  
4 irrelevant. Ask me about the Elliott  
5 meeting.

6 And I just want to note for the  
7 record you keep looking at like notes  
8 people are giving you. These are notes  
9 other lawyers are giving you? Are you  
10 doing the deposition or are other lawyers  
11 doing the deposition?

12 Q. When you had the draft  
13 agreement with Ms. Sullivan, was it  
14 contingent on the outcome of the Elliott  
15 meeting?

16 A. It is beyond the scope.

17 I am going to state for the  
18 record, I'm not going to keep sitting here  
19 and be subject to questions that are beyond  
20 the scope of the deposition. I have been  
21 here two and a half hours, and please don't  
22 presume I'm going to keep sitting here and  
23 allow myself to be treated this way. I  
24 again would urge you to ask me questions  
25 about the Elliott meeting. That is the

1 DONZIGER

2 main purpose of this deposition.

3 Q. How much money have you  
4 received from funds raised based on sales  
5 of interest in the judgment since March of  
6 2014?

7 A. I have already answered that  
8 question.

9 Q. And what was the amount?

10 A. I don't know exactly. It is  
11 not a lot.

12 Q. I'm going to mark as Exhibit  
13 5312 -- when you say not a lot, what does  
14 that mean?

15 A. Well, relative to what you  
16 make.

17 Q. So you have been paid less than  
18 \$100,000?

19 A. I have been paid -- I don't  
20 know. I pay a lot out, that I have been  
21 paid and then I pay it back out to other  
22 people at certain times. And part of the  
23 purpose of hiring Ms. Sullivan was to get  
24 all that reconciled.

25 Q. Can you estimate how much

1 DONZIGER

2 you've been paid for working on the Ecuador  
3 case since March of 2014?

4 A. I don't know. It might be less  
5 than zero, I don't know, given the funds  
6 that have gone out. It might be a few  
7 hundred grand. I just don't know. I hired  
8 Ms. Sullivan to reconcile all of that. It  
9 is not a lot of money.

10 Q. I'm going to hand you a  
11 document that we have marked as Exhibit  
12 5312. This was created based on the  
13 documents that Ms. Sullivan produced.

14 (Plaintiff's Exhibit 5312  
15 marked for identification.)

16 Q. So they bear MKS Bates number  
17 references. Do you see that?

18 A. Yes.

19 Q. This shows that you sent  
20 Ms. Sullivan \$25,000 invoices for December  
21 2017, January 2018, and February 2018, as  
22 well as March 2018. Do you see that?

23 A. Yes.

24 Q. It also shows that the  
25 December, January and February invoices

1 DONZIGER

2 were paid. You received those funds, yes?

3 A. It is beyond the scope.

4 Q. The February 5th, 2018 invoice  
5 for \$200,000, what was that for?

6 A. Beyond the scope. As a general  
7 matter -- well, forget it. I will stop  
8 right there.

9 Q. I'm going to mark as Exhibit  
10 5313 an invoice from Mr. Donziger bearing  
11 the Bates number MKS 389.

12 (Plaintiff's Exhibit 5313  
13 marked for identification.)

14 Q. Which states "Partial  
15 reimbursement for legal and consultive  
16 services and expenses/Ecuador environmental  
17 case, 2013 to 2017, due: \$200,000."

18 Did you prepare Exhibit 5313,  
19 Mr. Donziger?

20 A. It is beyond the scope.

21 Q. During the period 2013 to 2017,  
22 did you receive any monies related to the  
23 Ecuador case that were raised based on the  
24 existence of the Ecuador judgment?

25 A. It is beyond the scope.

1 DONZIGER

2 Q. You indicate on --

3 A. I'm going to say this for the  
4 record, okay, I'm here in good faith. You  
5 have yet -- it is now, I don't know, 12:30,  
6 you have yet to ask me about what happened  
7 at the Elliott meeting. I am not going to  
8 sit here all day while you go through this  
9 little game you are playing and try to ask  
10 me questions that are beyond the scope of  
11 this very limited deposition. So if you  
12 want to get information about the Elliott  
13 meeting, you should start asking questions  
14 now, because I'm telling you and I'm  
15 warning you, I'm not going to sit here all  
16 day and go through this. You are wasting  
17 time.

18 Q. Mr. Donziger --

19 A. You are wasting time, Andrea.

20 Q. This is a discovery deposition.

21 A. No, it doesn't give you --

22 Q. Are you going to even let me  
23 finish? I didn't interrupt you.

24 A. Go ahead.

25 Q. This is a discovery deposition.

1 DONZIGER

2 All of my questions are appropriate. I  
3 don't agree with your refusals to answer,  
4 but they are what they are. We will make a  
5 record of your refusals, then we will make  
6 an appropriate motion to compel. That's  
7 how the process works if you are going to  
8 refuse to answer. So don't threaten me or  
9 claim that you are being harassed when I  
10 have been absolutely 100 percent polite to  
11 you, which the video will show.

12 A. Well, I didn't accuse you of  
13 being impolite. I'm simply saying that the  
14 questions you are asking go beyond the  
15 scope of the deposition as ordered by Judge  
16 Kaplan. So why don't you --

17 Q. We disagree about that, sir.  
18 So I'm going to ask my questions.

19 A. Well, let me tell you what we  
20 do agree about. We agree that the Elliott  
21 meeting is something that Judge Kaplan  
22 ordered, so why don't we focus on what we  
23 agree on and get that information out.

24 Q. I will take the deposition as I  
25 believe it is appropriate.

1 DONZIGER

2 Now, returning your attention  
3 to Exhibit 5313, you indicate that funds  
4 are to be wired both to yourself and to  
5 Laura B. Miller at a Citibank account. Do  
6 you see that?

7 A. Yes.

8 Q. Do you have funds that are due  
9 and payable to you wired to Ms. Miller's  
10 account on a regular basis?

11 A. No. That wire never happened.

12 Q. Why is part of this money being  
13 directed to Ms. Miller?

14 A. Because I periodically give my  
15 wife money to pay living expenses.

16 Q. Have any other funds that were  
17 raised in connection with the Ecuador  
18 judgment been paid to Ms. Miller at your  
19 direction?

20 A. No.

21 Q. Have any funds --

22 A. No funds have been paid to  
23 Ms. Miller from the Ecuador judgment as far  
24 as I know.

25 Q. Have any funds that are --



1 DONZIGER

2 A. I'm sorry, from funds raised  
3 for the case have been paid to Ms. Miller,  
4 my wife.

5 Q. Have any funds raised in  
6 connection with the Ecuador judgment since  
7 March of 2014 been paid to anybody other  
8 than yourself for your benefit?

9 A. Not that I'm aware of.

10 Q. I'm going to mark as Exhibit  
11 5314 a compilation prepared from documents  
12 produced by Ms. Sullivan.

13 (Plaintiff's Exhibit 5314  
14 marked for identification.)

15 A. Is this a Gibson Dunn document?

16 Q. Yes, sir. But it has Bates  
17 numbers from Ms. Sullivan's production. It  
18 is a summary document.

19 Looking at page 1 of Exhibit  
20 5314, there's a \$50,000 deposit to your  
21 Relationship Checking 2265 on January 25th,  
22 2016. Do you see that?

23 A. Yes.

24 Q. Are those funds that were  
25 raised in connection with the Ecuador case?

1 DONZIGER

2 A. This is beyond the scope.

3 Q. You did not identify account  
4 2265 as one of the accounts you have used  
5 since 2014. Is there a reason you didn't  
6 disclose that account?

7 A. No. I mentioned there might  
8 have been other accounts and maybe there  
9 was. I don't know. I already said that I  
10 gave you the current universe, which is  
11 what you are entitled to know, and I said  
12 that there might have been other accounts  
13 that have been opened and closed.

14 Q. Have you, since March of 2014,  
15 have you banked anywhere other than TD?

16 A. I had sort of a complicated  
17 history, because during RICO I got asked to  
18 leave my prior bank where I banked for  
19 many, many years.

20 Q. Chase?

21 A. Chase. I don't remember  
22 exactly when that happened. I think it was  
23 during the trial or sometime before or  
24 after. I don't remember. That's why I'm  
25 at TD Bank because Chase asked me to leave.

1 DONZIGER

2 So I then went to TD Bank and started  
3 banking at TD. I don't remember exactly  
4 the date I started, I think it was prior to  
5 the RICO judgment, and I opened accounts.

6 Q. Did you bank anywhere between  
7 Chase and TD or you went --

8 A. I don't believe I did. I went  
9 to TD.

10 Q. And other than having other TD  
11 accounts that you may not have identified,  
12 do you have accounts at any other financial  
13 institutions that you haven't identified?

14 A. Well, I put it in my responses.  
15 I had an account at Schwab.

16 Q. Anywhere else?

17 A. I don't believe so.

18 Q. Returning your attention to  
19 Exhibit 5314, there are a total of \$488,450  
20 worth of payments from the Lenczner Slaght  
21 Royce & Smith firm, that's the Canadian  
22 counsel for the plaintiffs, made to you in  
23 2016. What are the origin of these funds?

24 A. Beyond the scope.

25 Q. The \$488,450 paid to you by

1 DONZIGER

2 Mr. Lenczner's firm, do you still have  
3 those funds?

4 A. Beyond the scope.

5 Q. Were the monies that were paid  
6 to you by Mr. Lenczner's firm, did they  
7 originate with a funder of the litigation?

8 A. It is beyond the scope.

9 Q. Do you have any e-mails or  
10 other documents relating to your receipt of  
11 these funds?

12 A. Beyond the scope.

13 Q. Did you direct these monies to  
14 be paid first to Mr. Lenczner and then have  
15 Mr. Lenczner transfer them to you?

16 A. Beyond the scope.

17 Q. You have indicated in your  
18 discovery responses that since 2014 your  
19 only income has been from working on this  
20 case and two rental properties.

21 A. Yes.

22 Q. Do all of the deposits shown on  
23 Exhibit 5314 relate to your work on the  
24 Ecuador matter?

25 A. Andrea, there is a lot of

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deposits here. You just gave me the document. I have no way of answering that question without studying this document. But, in any event, it is beyond the scope of the deposition. There is dozens of transactions.

Q. Well, these are all deposits. You have signed discovery responses indicating that you have a very limited number of sources of income.

A. I do. I do.

Q. So of these two pages of deposits, and for clarification --

A. I mean, it looks like there is more than two pages of deposits, first of all.

Q. There is not. I will clarify it for you.

A. Okay.

Q. The first two pages put the transactions, organize them by source. The second two pages organize them by your different bank accounts. So there is only two pages of transactions.

1 DONZIGER

2 A. Okay. But, anyway, I will note  
3 that on these two pages there is, I don't  
4 know, it looks to be approximately 25 or 30  
5 transactions. So even if it wasn't beyond  
6 the scope, I couldn't answer your question  
7 in this limited amount of time. I would  
8 have to study the document. But this is  
9 beyond the scope.

10 I mean, you know, your interest  
11 is in getting your client's judgment  
12 against me paid, so what is of interest is  
13 what I have now, and I am telling you, and  
14 I'm happy to talk about what I have now and  
15 how I can pay that, so I don't know why you  
16 are doing a fishing expedition into  
17 everything that has happened over the last  
18 several years, and that's why,  
19 respectfully, I think this is harassment.  
20 Why don't we talk about what happened in  
21 the Elliott meeting.

22 Q. Is your discovery response in  
23 which you state that your only sources of  
24 income since 2014 have been this case and  
25 two rental properties accurate?

1 DONZIGER

2 A. I believe it is. But I will  
3 say this, just to clarify, before we go  
4 further, a lot of money that came in to my  
5 accounts went back out to other people.  
6 I'm not embarrassed to get a \$500,000  
7 income over whatever period of time this  
8 is. But that is not an accurate reflection  
9 of monies that I was actually getting from  
10 the Ecuador case, to be as clear as I can.

11 Q. The \$488,450 paid to you by  
12 Mr. Lenczner's firm, was that compensation  
13 to you or something else?

14 A. That is beyond the scope.  
15 Other than to say it wasn't compensation to  
16 me only. There were other people working  
17 on the case who had contracts who needed to  
18 be paid out of that money.

19 Q. Did it include compensation to  
20 you?

21 A. To the extent that I could pay  
22 myself given my previous testimony, yes.

23 Q. And did this money come from a  
24 funder of the litigation?

25 A. It is beyond the scope.

1 DONZIGER

2 Q. Just yes or no, Mr. Donziger.

3 A. It is beyond the scope. I  
4 mean, what are you -- look, I have already  
5 testified, or I should say argued before  
6 Judge Kaplan that we raised money for the  
7 case from selling the FDA's shares.

8 Q. And when you say the FDA's  
9 shares, you just mean the judgment in its  
10 entirety, right? They don't have any  
11 particular share of the judgment?

12 A. No, the judgment, interest in  
13 the judgment would be a more accurate way  
14 to say it.

15 Q. And, in your view, with the  
16 FDA's authorization --

17 A. I have already testified to  
18 that, yes, I am authorized to help them  
19 raise money to pay litigation expenses,  
20 consistent with Judge Kaplan's April 25th,  
21 2014 order.

22 Q. And in addition to paying  
23 actual expenses, are you entitled to help  
24 them raise money for any other purpose?

25 A. I mean, I want to help the FDA.



1 DONZIGER

2 I think it is a great organization. On  
3 occasion I have helped them try to raise  
4 money for other purposes, foundation money,  
5 that kind of thing, projects, health  
6 projects. People are hurting, so there is  
7 all sorts of projects the FDA does, and on  
8 occasion I have tried to help them raise  
9 money.

10 Q. And is there any limit to the  
11 number of percentage interest you are  
12 authorized to sell in the judgment on  
13 behalf of the FDA?

14 A. Well, I don't sell anything. I  
15 try to get funders to buy interest in the  
16 judgment, and obviously subject to client  
17 approval. So I will do the best I can for  
18 my clients in that regard and present the  
19 possibility to them and they can say yes or  
20 no. You know, they determine that.

21 Q. Well, my question is actually  
22 in your view, is there any limit on the  
23 percentage interest the FDA can sell in the  
24 judgment? Can they sell somebody 50  
25 percent of the judgment, for example?

1 DONZIGER

2 A. I haven't given that any  
3 thought. I mean, this is a contingency fee  
4 case. You know, as you know, the normal  
5 contingency fee for a U.S.-based case like  
6 this would probably be 40, even 50 percent  
7 given the length of time it has taken.

8 The FDA has sold a very modest  
9 amount of its interest to fund it for 24  
10 years. So the FDA is well below the  
11 typical U.S. threshold for a contingency  
12 fee for a complex case like this. How far  
13 the FDA would go to sell interest is up to  
14 them, but right now, you know, they are  
15 comfortable with where they are at in terms  
16 of the amount that is put aside to pay  
17 contingent fees.

18 Q. How many -- what's the total  
19 percentage interest in the judgment that's  
20 been sold by the FDA?

21 A. That's not an appropriate  
22 question. That goes to our internal  
23 operations. I mean, on what basis do you  
24 think that's relevant to this deposition?

25 Q. You told Elliott that you had

1 DONZIGER

2 raised \$33 million in investor funds for  
3 the case. Do you recall that?

4 A. I don't specifically, but I  
5 might have.

6 Q. Is that an accurate statement?

7 A. I don't think it was actually.

8 Q. What's not accurate about it?

9 A. I think that I was confusing  
10 the amount of money actually raised with  
11 the amount of money that had been, you  
12 know, that some document that you guys had  
13 put together.

14 Q. What is the amount of money  
15 actually raised?

16 A. I think it is around -- well,  
17 I'm saying this because it is public  
18 information, I think it is around \$15  
19 million over 24 years, but it depends on  
20 various issues and how you count it and  
21 whether you count certain amount of labor  
22 from law firms that was uncompensated, that  
23 kind of thing.

24 Q. Where do you get the number \$15  
25 million?

1 DONZIGER

2 A. It is an estimate.

3 Q. Do you have in your  
4 documents --

5 A. Andrea, you guys have this  
6 information. Please don't play possum with  
7 me. You got this information during the  
8 RICO case, and then subsequent to that, the  
9 RICO case, the RICO judgment, there has  
10 been some more money raised, as I have said  
11 before Judge Kaplan.

12 Q. And what are the amount of the  
13 additional funds that have been raised?

14 A. I'm not saying. It is well  
15 beyond the scope of this deposition. I  
16 mean, how does that relate to the Elliott  
17 meeting?

18 Q. And that is included or not  
19 included in the \$15 million?

20 A. I don't know. You know, I'm  
21 not a financial wizard. Like there has  
22 been some millions raised to take us  
23 through RICO. There has been some more  
24 money raised, as I already said to Judge  
25 Kaplan, since RICO.

1 DONZIGER

2 Q. But you don't know how much?

3 A. No, I do know how much. I'm  
4 not telling you. It is beyond the scope of  
5 this deposition.

6 Q. I'm going to mark as Exhibit  
7 5315 a document and a certified  
8 translation.

9 (Plaintiff's Exhibit 5315  
10 marked for identification.)

11 Q. The heading Fromboliere,  
12 attorneys, addressed to Mr. Carlos Guaman.

13 A. Guaman.

14 Q. Guaman, president of the FDA,  
15 from Pablo Fajardo.

16 Are you familiar with this  
17 document, Mr. Donziger?

18 A. I have seen it. I read it when  
19 it came out.

20 Q. It states here that "On January  
21 19th, 2016, Mr. Luis Yanza and Mr. Steven  
22 Donziger signed a contract for the  
23 management of financial resources on behalf  
24 of the FDA and the plaintiffs. This is  
25 extremely serious since neither of these

1 DONZIGER

2 two persons represents the plaintiffs."

3 Do you see that?

4 A. This is beyond the scope of the  
5 deposition.

6 Q. Do you know what contract he is  
7 referring to?

8 A. It is beyond the scope of the  
9 deposition.

10 Q. Do you have that contract?

11 A. Beyond the scope of the  
12 deposition. Are we going to get to the  
13 Elliott meeting questions? Do you want to  
14 know what happened?

15 Q. In the next paragraph it states  
16 "Subsequently, at least two more documents  
17 have been signed, supposedly to finance the  
18 plaintiffs' case in Canada, the last of  
19 which was at the beginning of July 2016."

20 A. Andrea, this is irrelevant to  
21 this deposition. I'm sorry.

22 Q. It is not, Mr. Donziger.

23 A. It is. You are on a fishing  
24 expedition. Ask me about what Judge Kaplan  
25 ordered you to ask me about, seriously.

1 DONZIGER

2 That's what I'm here to talk about. I am  
3 not going to sit here all day --

4 Q. That's what we are doing,  
5 Mr. Donziger.

6 A. -- while you go on a fishing  
7 expedition. That's what we are doing?  
8 Really? So you admit you are on a fishing  
9 expedition?

10 Q. No, Mr. Donziger. We are  
11 asking questions consistent with our  
12 discovery.

13 A. These are not appropriate  
14 questions given Judge Kaplan's order, okay?  
15 I am -- you should talk to your client,  
16 okay, because I am going to leave this  
17 deposition if you don't start asking me  
18 questions about the Elliott meeting.

19 Q. Do you have the documents  
20 referenced in paragraph C of Exhibit 5317?

21 A. It is beyond the scope.

22 You know what I'm going to do,  
23 I'm going to take a five-minute break and  
24 if you don't start asking me questions  
25 about Elliott, talk to your client, and

1 DONZIGER

2 there is really nothing more to do here  
3 today. I mean, if Judge Kaplan rules you  
4 can ask these questions, we can do that,  
5 but you don't have the right to keep me  
6 here all day asking questions that are  
7 beyond the scope of the deposition.

8 MS. NEUMAN: We can go off the  
9 record.

10 THE VIDEOGRAPHER: This is the  
11 end of media file number three. The time  
12 is 12:39. We are going off the record.

13 (Recess taken.)

14 THE VIDEOGRAPHER: The time is  
15 12:45. We are back on the record. This is  
16 the beginning of media file number four.

17 BY MS. NEUMAN:

18 Q. Mr. Donziger, you are still  
19 under oath.

20 A. Yes.

21 Q. When you refer to Judge  
22 Kaplan's order ordering your deposition, I  
23 want to confirm that you are referring to  
24 Docket No. 2009, paragraph 3. "Donziger  
25 shall appear for and testify pursuant



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to" --

A. This is --

Q. -- "Chevron's subpoena."

A. There is a subsequent order by Judge Kaplan that limits the scope of the deposition to the Elliott issue.

Q. Why don't you direct me to that order, Mr. Donziger.

A. I don't have it handy. You know better than I.

Q. This is the order that ordered your deposition.

A. No, there is a subsequent order.

Q. And you're claiming that subsequent order limited this order in some way?

A. Yes, yes.

Q. But you can't direct me to that order?

A. You can find it.

Q. I don't think there is such an order. In any event, when you make scope objections, it's not based on Docket No.

1 DONZIGER

2 2009?

3 A. I haven't looked at this  
4 document for a while.

5 Q. Well, take a moment to read  
6 paragraph 3.

7 A. Listen, there is an order that  
8 Judge Kaplan issued limiting this  
9 deposition to the Elliott Management issue,  
10 but you haven't --

11 Q. There is no such order,  
12 Mr. Donziger.

13 A. Yes, there is. It is now  
14 12:45, you haven't asked me one question  
15 about it.

16 Q. There is no such order.

17 A. Why don't you ask me any  
18 questions about that?

19 Q. Mr. Donziger, when you make  
20 scope objections --

21 A. There is an order --

22 Q. -- are you making them based on  
23 Docket 2009 or a different order?

24 A. I don't know. I can't say  
25 offhand. I don't have all the orders in

1 DONZIGER

2 front of me. Judge Kaplan issued an order,  
3 my understanding, which I'm sure I could  
4 produce if I went back and looked at the  
5 docket, limiting this deposition to the  
6 Elliott meeting.

7 Q. I'm going to hand the witness  
8 Exhibit 5316, a Spanish document and  
9 translation entitled Declaration of  
10 Affected Nationalities in the Province of  
11 Sucumbios.

12 (Plaintiff's Exhibit 5316  
13 marked for identification.)

14 Q. Have you seen Exhibit 5316  
15 before, Mr. Donziger?

16 A. I don't know. It's beyond the  
17 scope.

18 Q. It states in Exhibit 5316, "On  
19 January 19th, 2016, Mr. Donziger and  
20 Mr. Yanza, without informing and without  
21 authorization from the undersigned  
22 Nationalities, or from the plaintiffs,  
23 executed an agreement with financiers from a  
24 so-called tax haven on behalf of the people  
25 affected and the nationalities, without any

1 DONZIGER

2 authorization to do so."

3 Do you see that?

4 A. This is beyond the scope.

5 Q. Did you execute such an  
6 agreement in 2016?

7 A. This is beyond the scope and it  
8 is also First Amendment protected.

9 Ms. Neuman?

10 Q. Yes, sir.

11 A. I want to say the following,  
12 okay: You are trying to ask questions that  
13 are beyond the defined scope of this  
14 deposition in my view, okay? I get that we  
15 disagree.

16 Q. Go ahead, I'm listening.

17 A. The main basis for your motion  
18 for contempt was the Elliott meeting. This  
19 was the motion you filed in March. It is  
20 now June. I'm here willing to talk about  
21 that and you still haven't asked me a  
22 question. So I believe you are harassing  
23 me.

24 I know we disagree. But I'm  
25 going to give you one last chance to ask

DONZIGER

1  
2 about the Elliott meeting or I'm going to  
3 leave this deposition at lunch and I'm not  
4 going to come back, and you can file your  
5 motion to compel. I'm not going to sit  
6 here all day and be subjected to this. So  
7 if you want to ask about the Elliott  
8 meeting, you have from now until lunch, and  
9 I will even make it a late lunch to give  
10 you some time. But please ask me about the  
11 Elliott meeting or I am going to leave this  
12 deposition at lunch.

13 Q. Mr. Donziger, I'm going to give  
14 you a stipulation that you signed, Docket  
15 No. --

16 A. It doesn't give you a right --  
17 the stipulation doesn't give you a right to  
18 just go on a fishing expedition and you  
19 know it.

20 Q. Mr. Donziger --

21 A. I know this document.

22 Q. Okay, so you are aware that you  
23 stipulated that you are required to respond  
24 to Chevron Corporation's money judgment  
25 discovery request and certain paragraph 5

1 DONZIGER

2 judgment compliance requests per Docket  
3 Nos. 2006 and 2020. Do you see that?

4 A. 2006 and -- I don't even know  
5 what those dockets are. All I know is this  
6 is: Judge Kaplan has issued orders that  
7 define the scope of this deposition and you  
8 haven't stuck to those, and I have been  
9 very patient, I have been here half a day  
10 now.

11 Q. Mr. Donziger, let me finish  
12 asking you my questions. You have done  
13 enough speechifying today. You have barely  
14 given any deposition time.

15 This is dated June 21st of  
16 2018. You look at the second page, is that  
17 your signature, sir?

18 A. Yes.

19 Q. So you signed this stipulation?

20 A. Yes.

21 Q. And on the first page, do you  
22 see where it says "Donziger, by order of  
23 the Court, Docket 2009, and agreement of  
24 the parties, will appear for deposition on  
25 June 25th, 2018 concerning the same topics

1 DONZIGER

2 and scope."

3 Do you see that?

4 A. Yes.

5 Q. And you see that the docket  
6 that I gave you, which defines your  
7 deposition as pursuant to our subpoena, is  
8 2009?

9 A. Listen, that's not the only  
10 thing out there that defines the scope of  
11 this deposition. Judge Kaplan issued a  
12 subsequent order, some order, which I don't  
13 have it at my fingertips --

14 Q. Do you see that Judge Kaplan  
15 signed this order on June 21st?

16 A. Obviously his signature is  
17 there. But, listen, instead of like wasting  
18 time, why don't you just ask me about the  
19 topic that he suggested the deposition be  
20 about, which is the Elliott meeting? Why  
21 are you not asking about the Elliott  
22 meeting?

23 Q. Mr. Donziger, are you refusing  
24 to testify to the topics as stipulated in  
25 Document 2030?

1 DONZIGER

2 A. I am -- I am voluntarily  
3 happily here in a cooperative spirit to  
4 answer any question, appropriate question,  
5 relevant question, related to the two  
6 topics at hand, okay? This is not a  
7 fishing expedition and that's how you're  
8 treating it.

9 Q. And you have self-defined those  
10 two topics --

11 A. I have not self-defined.

12 Q. -- as other than the  
13 stipulation marked as -- you need to let me  
14 finish, sir. I don't interrupt you.

15 You are defining the topics of  
16 your deposition differently than they are  
17 defined in Docket No. 2030, correct?

18 A. Judge Kaplan has defined the  
19 topics in his order as I have read his  
20 orders.

21 Q. And these are his orders?

22 A. There is multiple orders since  
23 March. I don't have them all at my  
24 fingertips.

25 Q. There is another order



1 DONZIGER

2 regarding your deposition that was issued  
3 since June 21st of 2018?

4 A. I'm not answering the question,  
5 okay? I have made my view clear. If you  
6 want to ask me about the Elliott Capital  
7 meeting, please ask me. I'm here to answer  
8 those questions.

9 Q. So are you now defining the  
10 scope of this deposition down to just that  
11 meeting?

12 A. No, that and my financial  
13 condition and ability to pay the judgment,  
14 and there is not a lot there because I have  
15 told you everything I own and I can pay  
16 Chevron's judgment.

17 Q. Then why haven't you paid it?

18 A. Because you haven't asked for  
19 it. Because you would rather come in here  
20 and do a fishing expedition and acting like  
21 I can't pay so you can find out everything  
22 you can about me, and that's why we have a  
23 First Amendment problem.

24 Q. Is there something preventing  
25 you from paying the judgment, sir? Or are

1 DONZIGER

2 you just choosing not to?

3 A. It is on appeal, by the way.

4 Q. Okay. Is there something  
5 preventing you from paying the judgment or  
6 you are choosing not to?

7 A. It is on appeal. The judgment  
8 is not final.

9 Q. I'm going to mark as Exhibit  
10 5317 documents produced by Mr. Rizack  
11 bearing the Bates numbers RIZACKJD 1  
12 through 5.

13 (Plaintiff's Exhibit 5317  
14 marked for identification.)

15 Q. You reviewed Mr. Rizack's  
16 production before he made it?

17 A. Yes.

18 Q. Did you withdraw, or withhold,  
19 I should say, documents that Mr. Rizack  
20 gave you to review and not produce them?

21 A. I didn't withdraw or withhold.  
22 I told Mr. Rizack that there was a  
23 particular document, actually two documents  
24 that I felt were not -- either not  
25 responsive or privileged or fell beyond the

1 DONZIGER

2 scope or were First Amendment protected.

3 Q. And are those documents here or  
4 they're not here?

5 A. They're not. He didn't produce  
6 them.

7 Q. You directed him not to produce  
8 them?

9 A. I don't direct him to do  
10 anything. I am not his lawyer and he  
11 doesn't work for me. We are colleagues and  
12 he appropriately allowed me to review the  
13 documents prior to production.

14 Q. And you identified documents he  
15 should not produce and those haven't been  
16 produced; is that right?

17 A. I told him there were a couple  
18 of documents that I felt would be subject  
19 to these outstanding issues, legal issues,  
20 that I have mentioned, and that it would  
21 not be appropriate to produce them at this  
22 point.

23 Q. And what do these documents  
24 relate to generally?

25 A. The internal operations of our

1 DONZIGER

2 team and the litigation.

3 Q. And the documents that he did  
4 produce, you had no objection to him  
5 producing?

6 A. No.

7 Q. So the last two pages of  
8 Mr. Rizack's production, pages 4 and 5,  
9 relate to the development of a budget for  
10 an Ecuador trip. Do you see that?

11 A. Yes.

12 Q. The total for the trip is  
13 \$45,550. What does this relate to?

14 A. That is beyond the scope of the  
15 deposition. I mean, you are asking about a  
16 budget to bring some Ecuadorians for a  
17 court hearing, according to this document,  
18 and you are not asking about the Elliott  
19 meeting.

20 Q. These are documents that you  
21 agree that Mr. Rizack should produce.

22 A. Not should. He felt they were  
23 responsive. I mean, I don't know why you  
24 are asking me about something like that  
25 when you are not asking about the Elliott

1 DONZIGER

2 meeting.

3 Q. And are these \$50,000 in  
4 expenses that you paid?

5 A. Beyond the scope, First  
6 Amendment protected. And, by the way,  
7 there is no presumption by answering that  
8 that these expenses were paid.

9 Q. I'm going to mark as Exhibit  
10 5318 an e-mail from Mr. Rizack to  
11 Mr. Herrera dated June 24th in which he  
12 states he is withholding three -- I'm  
13 sorry, four documents at your direction.  
14 (Plaintiff's Exhibit 5318  
15 marked for identification.)

16 A. Okay.

17 Q. Did you direct him to withhold  
18 four documents on the basis of privilege?

19 A. I don't think so. I thought it  
20 was two documents, so I would have to ask  
21 him, and I will ask him.

22 Q. And you have not prepared a log  
23 for those documents?

24 A. Mr. Rizack can send you the  
25 basic information.

1 DONZIGER

2 Q. What does that mean?

3 A. I mean, it is not -- it is not  
4 a complicated exercise. I don't believe it  
5 is up to me to provide you a log. I'm not  
6 producing. He is producing.

7 Q. When was the first time you met  
8 with Elliott Capital?

9 A. On the day of the meeting.

10 Q. You indicated in some of your  
11 correspondence with Ms. Sullivan that you  
12 had met with them previously. Was that not  
13 right?

14 A. Oh, I forgot. Yeah, I had met  
15 with -- I don't know if I had ever met with  
16 them, but I had someone who I was working  
17 with many years ago had a contact with them  
18 about the case. It might have been over  
19 ten years ago. I don't remember exactly.

20 Q. Do you recall who you met with  
21 in that original meeting?

22 A. I believe, to the best of my  
23 recollection, it was something that had  
24 been arranged by Nicholas Economou of H5.

25 Q. And do you remember who you met

1 DONZIGER

2 with?

3 A. I don't think I met with anyone  
4 at Elliott at that time. I think somebody  
5 Nicholas knew approached them with the idea  
6 of this and I don't think there was  
7 interest, if I remember correctly.

8 Q. Do you have documents related  
9 to that initial meeting?

10 A. I don't believe I do.

11 MS. NEUMAN: It is 1 o'clock.  
12 I would like to take our lunch break.

13 THE VIDEOGRAPHER: The time is  
14 1 p.m. We are going off the record.

15 (Discussion off the record.)

16 THE VIDEOGRAPHER: The time is  
17 1:01. We are back on the record.

18 BY MS. NEUMAN:

19 Q. Mr. Donziger, you want to make  
20 a statement for the record about how you  
21 are limiting the scope of this deposition  
22 to the Elliott meeting?

23 A. I have already said this on  
24 multiple occasions. I am leaving this  
25 deposition now. It is my view that

1 DONZIGER

2 Chevron's counsel has wasted the majority  
3 of the morning asking me questions beyond  
4 the scope, and I am not going to stay when  
5 I believe this has turned into a harassing  
6 exercise.

7 I am more than happy, as I  
8 stated repeatedly starting two or three  
9 hours ago, to answer any question about  
10 Elliott. I am not taking a lunch break and  
11 staying. If you want to ask more questions  
12 about Elliott I will give you some minutes  
13 before lunch, otherwise if you want to have  
14 lunch now I am going to leave.

15 Q. So, Mr. Donziger, you received  
16 notice that we planned to take the  
17 deposition from 10 to 6, correct?

18 A. That doesn't matter. You don't  
19 unilaterally decide how long a deposition  
20 lasts.

21 Q. You understand that under the  
22 federal rules, there are rules about the  
23 length of a deposition?

24 A. The length of a deposition is  
25 not completely up to you, it is also up to



1 DONZIGER

2 the party being deposed, and if you are  
3 going beyond the scope of the deposition I  
4 have a right not to subject myself to this  
5 harassment. Your remedy is to go to Judge  
6 Kaplan and I will respond appropriately,  
7 okay? You have wasted most of this  
8 morning --

9 Q. Okay, Mr. Donziger --

10 A. -- on all sorts of issues and  
11 they don't relate to the scope of this  
12 deposition. I'm sorry, but if you want to  
13 ask more questions, I will give you some  
14 more minutes right now.

15 Q. So our position, Mr. Donziger,  
16 since we are making speeches, is that it is  
17 not up to you to unilaterally limit this  
18 deposition, contrary to a stipulation that  
19 you signed and contrary to two orders that  
20 the Court made.

21 It is also not up to you to  
22 unilaterally decide how long the deposition  
23 is going to last. You have taken multiple  
24 breaks this morning, an absurd number  
25 really, without any objection from us, and

1 DONZIGER

2 now when everybody else wants to take a  
3 normal lunch break your position is you are  
4 terminating the deposition. That is not in  
5 good faith. None of this behavior has been  
6 in good faith. All the speechifying you  
7 did all morning to waste the morning time  
8 was not in good faith.

9 A. May I respond? Were you  
10 finished?

11 Q. Yes, go ahead.

12 A. I didn't speechify. I stated  
13 objections. I took short breaks. You had  
14 all morning to ask me about the purpose,  
15 the main purpose of this deposition, and  
16 you refused. You are playing possum with  
17 me and you are asking me questions that  
18 were irrelevant and I stood here and  
19 patiently went through it all with you and  
20 repeatedly offered to answer questions  
21 about Elliott. Since you never asked, I am  
22 not going to sit here all day while you go  
23 on a fishing expedition.

24 My position is clear in my  
25 responses and in the various motions I have

1 DONZIGER

2 filed. So what I would suggest is we agree  
3 to disagree, we end the deposition, and we,  
4 both parties, will seek appropriate  
5 remedies.

6 Q. So I'm not agreeing to end the  
7 deposition, Mr. Donziger. How long -- you  
8 want to answer questions about Elliott?

9 A. I don't, but --

10 Q. We will see how long the court  
11 reporter and the videographer can last,  
12 since you won't let people have their  
13 normal lunch break because it is  
14 inconvenient for you.

15 A. No, you have wasted the whole  
16 morning. I will give you 15 minutes and  
17 you can then go have lunch,. Ask me any  
18 question you want about Elliott.

19 Q. What were the terms offered to  
20 Elliott?

21 A. There were no terms offered to  
22 Elliott.

23 Q. How much investment were you  
24 seeking?

25 A. We never got to that point.

1 DONZIGER

2 Q. Did you discuss with  
3 Ms. Sullivan how much you were going to ask  
4 Elliott for?

5 A. I think we did.

6 Q. When you told Elliott that you  
7 had a 6.3 percent interest in the judgment,  
8 was that an accurate statement?

9 A. According to my retainer, yes,  
10 but I have given portions of that to other  
11 people.

12 Q. To whom have you given portions  
13 of that?

14 A. Rick Friedman, Zoe Littlepage.

15 Q. Did you give them --

16 A. So they would represent me in  
17 the RICO case, just to be clear.

18 Q. You gave them portions of that  
19 before or after the RICO judgment?

20 A. Before.

21 Q. So what percentage of the 6.3  
22 do you currently own?

23 A. Again, I think it is pretty  
24 much a nullity for practical purposes given  
25 the RICO judgment. But I think if you were

1 DONZIGER

2 to discount what has been allocated to  
3 Mr. Friedman and Ms. Littlepage and a  
4 couple of other people --

5 Q. Who were the other people?

6 A. Two people who had loaned me  
7 money to pay John Keker, family members. I  
8 would estimate it is about 5 or 5.2  
9 percent.

10 Q. I'm sorry, what you have left  
11 is 5 percent?

12 A. In other words, instead of 6.3,  
13 even though it is all for me and I owe  
14 them, that if you were to discount what  
15 they have been contractually promised, it  
16 would be about 5.2 percent based on my best  
17 estimates.

18 Q. When you say discount, you mean  
19 subtract out?

20 A. Yes, subtract out.

21 Q. From the 6.3?

22 A. Yeah.

23 Q. Why was your 6.3 percentage  
24 being discussed with Elliott?

25 A. I don't remember. I think

1 DONZIGER

2 either Lee asked me what I owned and I told  
3 him or I told him roughly how we were  
4 structured. I don't remember exactly.

5 Q. You --

6 A. But to be clear, it wasn't in  
7 order to sell any of the 6.3 percent to  
8 Elliott.

9 Q. When you have sold additional  
10 interest in the judgment, what have been  
11 the terms?

12 A. That's not an appropriate  
13 question. I mean, ask me about the Elliott  
14 meeting.

15 Q. How do you know when you are  
16 selling an interest in the judgment that  
17 you are not impacting your ownership  
18 interest in the judgment?

19 A. Because they are completely  
20 different. I mean, to be clear, so you  
21 understand, every entity that has an  
22 interest in the judgment has its own  
23 interest that is unaffected by other  
24 people's or other entities' interests.

25 It would be like a business.

1 DONZIGER

2 Say there is 100 percent would be all the  
3 equity in a business and, you know, X party  
4 owns 3 percent, another owns 2 percent.  
5 They are just different pieces of the pie.

6 Q. Everybody's percentage is  
7 affected by the value of the whole,  
8 correct?

9 A. Yes.

10 Q. And when you bring in new  
11 funders, do you reduce the value of the  
12 whole?

13 A. I thought you were going to ask  
14 me about the Elliott meeting. But since  
15 you are putting off your lunch, I'm going  
16 to answer that question.

17 In theory, the value of the  
18 whole, it would be increased because of the  
19 support would allow the case to advance.  
20 So if you sell an equity interest to X  
21 party, it doesn't decrease the value of the  
22 whole or the value of what other entities  
23 own in the overall interest pie, for lack  
24 of a better term, of the case.

25 Q. So no one, since the entry of

1 DONZIGER

2 the RICO judgment, has been any kind of a  
3 priority interest in the judgment, in other  
4 words, they get paid before anybody else?

5 A. That's generally not how we  
6 operate.

7 Q. When you were discussing  
8 offering terms to Elliott, were you doing  
9 so in conjunction with the Amazonia  
10 structure or ignoring the Amazonia  
11 structure?

12 A. It wasn't in conjunction with  
13 the Amazonia structure.

14 Q. So to the extent Amazonia  
15 requires notices of seeking new funders and  
16 that sort of thing, you didn't give any of  
17 those notices?

18 A. How do I explain this? The  
19 clients, meaning the FDA, don't want to use  
20 the Amazonia structure anymore because of  
21 the lawsuit that Chevron filed against it  
22 in Gibraltar. I mean, it is inoperable as  
23 far as the FDA is concerned. So the FDA is  
24 making available certain interests in the  
25 judgment to get funding in to pay



1 DONZIGER

2 litigation expenses, but it is independent  
3 of Amazonia.

4 Q. The FDA signed the Amazonia  
5 documents, correct?

6 A. I believe so, but I don't know  
7 for sure. I mean, they are right here.

8 Q. And do you have any position on  
9 whether the FDA is in breach of the  
10 Amazonia documents based on these  
11 transactions you have been involved in?

12 A. I don't believe the Ecuadorian  
13 affected communities, be it the FDA or  
14 whoever else signed the Amazonia documents,  
15 would consider that to be a breach. I  
16 mean --

17 Q. Do you consider any of the  
18 actions you have taken to put you in breach  
19 of the Amazonia documents?

20 A. No, as I have authority from my  
21 clients. I mean, one of the services I  
22 provide the FDA is trying to help them  
23 generate capital to continue the case.

24 Q. Do you also provide legal  
25 advice or just fundraising advice?

1 DONZIGER

2 A. I provide -- look, I have lots  
3 of different functions, fundraising is one  
4 of many. Well, helping them fundraise,  
5 which I might add, if I may, is effectively  
6 suspended during the pendency of this  
7 litigation, given the contempt motion and  
8 the subpoenas issued.

9 Q. So you have suspended your  
10 fundraising efforts since starting what  
11 date?

12 A. It has been -- I have not  
13 voluntarily suspended fundraising or  
14 seeking of funds, because it's not just  
15 selling equity, there is people who like to  
16 donate. But, you know, money is always  
17 needed to fund the case, to support the  
18 case, to support the various activities of  
19 advocacy.

20 But the filing of the contempt  
21 motion effectively forced us or put us in a  
22 position, I should say, me and others who  
23 assist in this effort, where we cannot  
24 raise funds.

25 Q. So you are talking about

1 DONZIGER

2 funding the case. Is Canadian counsel on a  
3 contingency?

4 A. That's beyond the scope. That  
5 relates to our internal operations and it  
6 is First Amendment protected.

7 Q. Well, they have stated on the  
8 record that they are on a contingency. Is  
9 that an accurate statement?

10 A. Yes, from my -- based on what I  
11 know, yes. There has been a massive amount  
12 of work done by Canadian counsel that is  
13 completely uncompensated for.

14 Q. Doesn't the contingency  
15 compensate them?

16 A. Well, yeah, but it -- you know,  
17 yeah, there is a contingency to be paid for  
18 work that hasn't been paid for on an hourly  
19 basis as far as I know.

20 Q. Does the contingency agreement  
21 get paid if there is collection?

22 A. That's correct.

23 Q. So you would anticipate in the  
24 meantime that they would not get paid per  
25 the agreement?

1 DONZIGER

2 A. Sometimes you have hybrid  
3 arrangements, people get paid some and  
4 they, you know...

5 Q. Does Canadian counsel have a  
6 hybrid arrangement?

7 A. Look, you know, Canadian  
8 counsel has an agreement with his -- well,  
9 one of the Canadian counsel has an  
10 agreement with his clients, and you can ask  
11 him about it.

12 Q. You said the FDA has an  
13 exigible interest in the judgment and you  
14 were meeting with Elliott on behalf of the  
15 FDA. If the FDA is the one that owns the  
16 judgment, why aren't they plaintiffs in the  
17 enforcement actions?

18 A. I think at the time that was  
19 filed, the one in Canada, there was a  
20 different organizational structure to the  
21 operation in Ecuador than there is today.

22 Q. And how would that impact who  
23 has a right --

24 A. You would have to ask Canadian  
25 counsel. I mean, I don't know. I wasn't

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really involved in the thinking of that at the time. The FDA is the beneficiary of the judgment according to the Ecuador judgment, so they would collect the funds and spend them on behalf of all the affected communities and the affected people.

Q. But there isn't anything in the judgment that authorizes the FDA to enter into contingency fee agreements, is there?

A. There is language in various documents -- first of all, the answer to that is no, but there is Ecuador law principles that allow claim holders, just like in this country, to finance their case by giving up a portion of their claim.

Q. What provision of Ecuador law are you referring to?

A. I couldn't answer that off the top of my head. It is basic contracting law and we have researched it extensively, I mean, years ago. I couldn't really put my finger on any document. I know you are going to ask. I mean, I might be able to,

1 DONZIGER

2 appropriate, but, you know, basic  
3 contracting principles, the same as in this  
4 country.

5 Q. So who participated in the  
6 Elliott meeting?

7 A. It was me, Katie Sullivan and  
8 Lee and Jesse Cohn for a period of time,  
9 and then he left early and then it was just  
10 me, Katie and Lee Grinwald.

11 Q. How long did that meeting last?

12 A. It lasted quite some time, I  
13 would say 60 to 90 minutes.

14 Q. Did Mr. Cohn -- how long did he  
15 stay in the meeting?

16 A. Maybe 20 minutes.

17 Q. Did he take notes that you saw?

18 A. I don't remember. He seemed to  
19 be sort of just --

20 Q. What does this mean  
21 (indicating)?

22 A. The big enchilada, and Lee was  
23 sort of handling the meeting. I think  
24 Jesse was just sort of listening.

25 Q. And what presentation did you

1 DONZIGER

2 make to Mr. Grinberg?

3 A. I don't recall the specifics,  
4 but, of that particular one, but I do know  
5 that generally when I talk to potential  
6 funders I explain the basic case, why I  
7 think the claims are valid. I explain why  
8 I think the RICO judgment is wrong and  
9 factually incorrect. I explain the fraud  
10 that I believe Alberto Guerra, you know,  
11 engaged in during the RICO matter. I  
12 explain a bit of the structure.

13 It really depends very much on  
14 how much interest there is in hearing all  
15 this, how far I'll go, how many questions,  
16 that kind of stuff.

17 Q. And do you also discuss the  
18 current level of investment in the  
19 judgment?

20 A. If asked.

21 Q. Did Mr. Grinberg ask you about  
22 that?

23 A. I don't really remember  
24 specifically. I mean, it was a long  
25 meeting and he is a very sophisticated

1 DONZIGER

2 gentleman and I presume he asked me or I  
3 told him.

4 Q. I'm going to show you Sullivan  
5 Exhibit 11, the last two pages of which  
6 bearing Bates numbers MKS 155 and 156, are  
7 Ms. Sullivan's notes from the Elliott  
8 meeting.

9 At the beginning, she wrote  
10 "FCPA violations unpopular in Australia."  
11 Do you see that?

12 A. Yes.

13 Q. What does that refer to?

14 A. I believe, based on my  
15 recollection, the "unpopular in Australia,"  
16 I mean, I don't remember any specific  
17 conversation about this with Lee, but I  
18 think it relates to someone saying that  
19 Chevron was unpopular in Australia because  
20 of its tax problems.

21 Q. What tax problems?

22 A. It has a lot of tax problems in  
23 Australia, Chevron does, underpayment of  
24 taxes.

25 Q. And your view of that is based



1 DONZIGER

2 on?

3 A. It is just news reports.

4 Q. Underneath that it says  
5 "parallel efforts uncared outside of  
6 U.S." -- "in cases," I'm sorry, "outside of  
7 U.S., Brazil and Argentina."

8 A. Just to be clear, these are  
9 Katie's notes. I mean, I don't know if she  
10 was writing down thoughts she had or she  
11 was trying to write about what was actually  
12 happening in the meeting. I mean, I don't  
13 know.

14 Q. Well, did you discuss the  
15 Brazil and Argentina cases in the meeting?

16 A. I don't know. I don't remember  
17 specifically. I would not be surprised if  
18 we did.

19 Q. But you don't recall?

20 A. No, I don't recall  
21 specifically.

22 Q. Further down she says "fund  
23 Canadian litigation in near term." Do you  
24 see that?

25 A. Yeah.

1 DONZIGER

2 Q. And that was the purpose for  
3 which you were seeking money from Elliott,  
4 to fund the Canadian litigation in the near  
5 term?

6 A. I don't know. I mean, it  
7 certainly would have included that, among  
8 other things.

9 Q. It says "Ecuador judgment  
10 injunction in the U.S."

11 Do you see that?

12 A. Yes.

13 Q. What was discussed with Elliott  
14 about the injunction in the U.S.?

15 A. I don't know what that refers  
16 to.

17 Q. Down further Ms. Sullivan  
18 writes "play with threats versus successful  
19 ruling in Canada."

20 What does that refer to?

21 A. I don't know.

22 Q. Do you remember discussing  
23 threats in the Elliott meeting?

24 A. I don't know. I mean, the  
25 Elliott meeting was many months ago and I

1 DONZIGER

2 just don't remember the specifics as I sit  
3 here today other than we had a general  
4 discussion about Elliott potentially  
5 investing in the case. And these are her  
6 notes, not mine. I don't know what she is  
7 talking about.

8 Q. Further down it says "case  
9 until bank in Ecuador."

10 Do you know what that refers  
11 to?

12 A. "Case until bank in Ecuador,"  
13 no, I don't know what that is.

14 Q. If you look at the next page  
15 bearing the Bates numbers MKS 156, at the  
16 top it says "boycott time versus Chevron."

17 What does that refer to?

18 A. I don't know.

19 Q. "Government to look at it."

20 Do you recall discussing a  
21 boycott in the meeting?

22 A. No.

23 Q. Further down it says "6.3  
24 percent Steven."

25 That's referring to you?

1 DONZIGER

2 A. Yes.

3 Q. And your claimed ownership  
4 interest in the judgment?

5 A. Well, yeah, subject to the  
6 constructive trust.

7 Q. And you told Elliott this was  
8 subject to the constructive trust?

9 A. I don't recall. To me it was  
10 irrelevant because we weren't selling those  
11 shares. I think this is a part probably --  
12 I mean, I cannot speak for Katie's notes  
13 and this is ridiculous to even speculate,  
14 but I will do it, because you are staying  
15 through lunch, basically I think this was  
16 the part of the meeting where they asked --  
17 or he asked like what was the structure of  
18 who owned what.

19 Q. Okay. What is the structure of  
20 who owned what?

21 A. It is basically 15 or 16  
22 percent is committed to various entities,  
23 meaning lawyers, service providers, you  
24 know, other service providers, like  
25 consultants, and, you know, just people who

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do various things, and that's apart from the overwhelming interest, which is owned by the clients as manifested through the FDA.

Q. When you said -- when you were telling Elliott the 15 to 16 percent is committed to other people, does that include the amounts committed to Torvia?

A. So to be clear, and I don't mean to leave Chevron out of this equation, because Chevron probably has a different view, but when Torvia and Mr. DeLeon and really all the entities, Woodsford, H5, whoever it was that turned over, in theory, signed those agreements to turn over its interest to Chevron, our view was that was contractually impermissible and that all of those interests reverted back to the FDA or, slash, the clients.

Q. Did you inform Torvia that their 22 million in financing reverted back to the FDA? When these monies reverted back, do you give them their money back?

A. It is not monies, it is

1 DONZIGER

2 interest that reverted. It is the interest  
3 in the judgment that reverted. The money  
4 was gone. It was spent.

5 Q. So you cancelled their interest  
6 but you didn't refund their money?

7 A. They invested money and they  
8 chose, in the case of Torvia, to move in a  
9 different direction in a way that was in  
10 violation of their obligations to the  
11 client. So that money reverts back -- I  
12 mean not the money, the interest, that is  
13 the contingent interest that, for example,  
14 Mr. DeLeon had in our view reverts back to  
15 the clients.

16 Q. Do you have any document that  
17 shows that Torvia transferred its interest  
18 to Chevron?

19 A. Well, I don't remember  
20 specifically. I remember a series of  
21 agreements.

22 Q. And you have these agreements?

23 A. I think you have them.

24 Q. No, I'm asking if you have  
25 them.

1 DONZIGER

2 A. I don't know. I remember -- I  
3 mean, this is years ago, but I remember a  
4 series of public relations style press  
5 releases by Chevron Corporate announcing  
6 these agreements. I mean, I think one was  
7 Patton Boggs, one was Burford, one was  
8 Stratus, one was H5.

9 I mean, there is a series of  
10 these things and some of them, if I  
11 remember correctly, interests were turned  
12 over from the interest holder to Chevron as  
13 part of some sort of settlement agreement  
14 with Chevron.

15 Q. So did Mr. DeLeon or Torvia  
16 inform you that they had transferred their  
17 interest in the judgment to Chevron?

18 A. I don't know if they informed  
19 me, but Chevron informed the world.  
20 Chevron made it public either through court  
21 filings, press releases, or both.

22 Q. Setting aside what Chevron said  
23 and how you might have interpreted it, did  
24 Mr. DeLeon or Torvia inform you that they  
25 had transferred their interest to Chevron?

1 DONZIGER

2 A. I don't believe so.

3 Q. Did you ever inform Torvia or  
4 Mr. DeLeon that the FDA was taking the  
5 position that their interest in the  
6 judgment no longer existed?

7 A. I don't know, and it wouldn't  
8 be necessarily my responsibility to do  
9 that. But I don't know if he was informed  
10 or not. I do remember --

11 Q. My question was did you inform  
12 him?

13 A. I don't remember. I don't  
14 believe so because he cut off contact with  
15 me.

16 Q. Have you informed any prior  
17 investor in the judgment whom you and the  
18 FDA are currently taking the position no  
19 longer has an interest in the judgment of  
20 that fact?

21 A. Repeat the question.

22 Q. So you said there is a series  
23 of people who used to have an interest in  
24 the judgment who no longer have such an  
25 interest.



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A. Yes.

Q. Have you informed any of these people that they no longer have an interest in the judgment according to you?

A. I don't know if I have personally. I mean, we have, the FDA and its counsel, have made it clear and the people have copies of a contract that they had signed as part of their investment that I believe prevents the transfer of shares without approval of the contracting entity.

Q. And those would be the Amazonia documents?

A. I think they are Amazonia documents as well as other -- the contracts that the investors signed outside the Amazonia structure that is prior to the existence of Amazonia or subsequent to the seizure of Amazonia, for lack of a better word.

Q. Are you referring to the intercreditor agreement?

A. No, that didn't occur to me.

Q. I don't know what document you

1 DONZIGER

2 are referring to.

3 A. I don't know what it is either,  
4 except that --

5 Q. Do you have this document?

6 A. I'm sure I do somewhere, I just  
7 didn't bring it to this deposition. I  
8 didn't know it would come up.

9 But if your question is how do  
10 I know that it is the position of the FDA  
11 that these shares reverted back or this  
12 interest reverted back to the FDA, you  
13 know, I could find that out for you if you  
14 would like me to.

15 Q. How do you know that?

16 A. Well, I would have to dig up  
17 some old documents. Do you want me to do  
18 that?

19 Q. Well, I want to understand --  
20 I'm not clear on what it is you are trying  
21 to say. So you're saying that, we'll take  
22 Torvia as an example, that Torvia executed  
23 documents when it obtained its interest in  
24 the Ecuador judgment?

25 A. Torvia executed documents, yes.

1 DONZIGER

2 Q. And, in your view, they  
3 subsequently violated some provision of  
4 these documents that caused them to forfeit  
5 their interest?

6 A. Well, they signed a settlement  
7 agreement with Chevron.

8 Q. And is it your view that that  
9 violated some provision of the agreement  
10 pursuant to which they got their interest?

11 A. I'm not an expert on this  
12 issue, okay? There is other lawyers in  
13 Ecuador and elsewhere who I think know this  
14 issue better than I.

15 There is, as I understand it,  
16 there is a provision in investor contracts  
17 that prevent transfer of shares. So the  
18 signing of the settlement agreement with  
19 Chevron which resulted in the transfer of  
20 shares that the clients had granted to that  
21 investor resulting in a transfer to Chevron  
22 would be, what's the word I'm looking for,  
23 would be illegal or inoperable on its face,  
24 and those shares would not actually  
25 transfer despite whatever documents would

1 DONZIGER

2 be signed by these parties. That's the  
3 position of the FDA as I understand it.

4 Q. And is that position based on  
5 the 2011 retainer which is governed by New  
6 York law or the Amazonia documents?

7 A. It is not based on my retainer.  
8 It is based on agreements between investors  
9 and the FDA or, you know, the contracting  
10 entity that handed over the interest in  
11 exchange for funds.

12 Q. And are these documents  
13 something other than the Amazonia  
14 documents?

15 A. Apart from Amazonia, I believe  
16 every investor has an investor contract.

17 Q. And do you have copies of these  
18 investor contracts?

19 A. Some of them I do, maybe all of  
20 them.

21 Q. And these contracts, according  
22 to you, prevent people from assigning their  
23 beneficial interest?

24 A. Without the approval, as I  
25 understand it, of the FDA.

1 DONZIGER

2 Q. And you can find the document  
3 that says this?

4 A. I don't know. I think I can.  
5 Do you want it?

6 Q. Sure.

7 A. Okay. I will try to find it.

8 Q. I'm going to hand you a  
9 document that was marked as Exhibit 32 in  
10 the Sullivan deposition. These are the  
11 notes that Mr. Grinberg took during the  
12 meeting.

13 A. Okay.

14 Q. To clarify, your only client  
15 during this meeting was the FDA?

16 A. That's correct.

17 Q. It says at the top "33 million  
18 3rd-party funders individuals."

19 Do you see that?

20 A. Yup.

21 Q. And you were telling  
22 Mr. Grinberg that that was the amount that  
23 had been invested in the judgment so far?

24 A. I think that's what I told him.

25 Q. Next it says "Canada as

1 DONZIGER

2 jurisdiction - don't want to have a trial."

3 Do you see that?

4 A. Yes.

5 Q. What does that mean?

6 A. Well, you would have to ask  
7 him, but I believe, I mean, my  
8 interpretation, which is inherently  
9 speculative, is that that reflects a  
10 comment that I made that Chevron doesn't  
11 want to have a trial in Canada where its  
12 RICO evidence would be put to the test  
13 before a neutral court.

14 Q. That is just an opinion you  
15 were giving?

16 A. Yes.

17 Q. Then it says "subsidiary ruling  
18 risk assets."

19 What is that a reference to?

20 A. Can I just -- your questions  
21 are sort of -- it would be better if you  
22 said what do you think that might mean,  
23 because these are not my notes and I don't  
24 know what he's thinking, and obviously you  
25 have access to him, he gave you an

1 DONZIGER

2 affidavit, and you can ask him.

3 Q. Do you recall discussing  
4 anything related to subsidiary ruling or  
5 risking assets?

6 A. Yes.

7 Q. What do you recall discussing  
8 about those topics?

9 A. Well, I don't really recall,  
10 but based on this my guess is that we  
11 talked about the pending legal issue of  
12 whether Chevron Canada would be a defendant  
13 in the enforcement action, which, as you  
14 know, was recently decided with the Ontario  
15 Court of Appeal.

16 Q. Then Mr. Grinberg wrote "The  
17 right of the Ecuadorians to seek a judgment  
18 validity to enforcing foreign judgments -  
19 judgments to adapt." Do you see that? Or  
20 "adopt."

21 A. Uh-huh.

22 Q. Did you discuss topics which  
23 relate to this note that you recall?

24 A. I don't even know what that  
25 means. I mean, I don't know what he is

1 DONZIGER

2 saying there. "The right of the  
3 Ecuadorians to seek a judgment, validity to  
4 enforcing foreign judgments - judges to  
5 adopt."

6 I'm sure I talked about just  
7 the general idea of enforcing a foreign  
8 judgment.

9 Q. Further down it says  
10 "prosecuting in Canada, have capital and  
11 reputation for staying power and winning."

12 Is that something you  
13 represented to Mr. Grinberg?

14 A. I don't recall.

15 Q. Then in the margin it says "can  
16 money come in the U.S."

17 Do you see that?

18 A. Yeah.

19 Q. Do you recall Mr. Grinberg  
20 asking you that?

21 A. I think we talked about that,  
22 based on my recollection.

23 Q. And what was the substance of  
24 the conversation as it relates to that  
25 topic?



1 DONZIGER

2 A. I don't remember specifically.  
3 I think he had a question as to given Judge  
4 Kaplan's order if a party, you know, that's  
5 not part of the RICO order could collect in  
6 the U.S., a U.S. party.

7 Q. I'm sorry, could you say that  
8 again?

9 A. I believe, to the best of my  
10 recollection, I don't know this for sure, I  
11 believe he was asking whether a U.S. party  
12 could collect, that invested in the case,  
13 could collect funds in the U.S. from the  
14 enforcement of a judgment in another  
15 jurisdiction.

16 Q. And what did you tell him?

17 A. I have no idea. I mean, I have  
18 never seen that situation. I don't know.  
19 I mean, I don't remember what I told him.  
20 Certainly I might have offered my  
21 completely uninformed opinion. I have  
22 never researched that question.

23 Q. So further down it says "15 to  
24 20 percent committed to 15 people, 6.3  
25 percent personally of the 100 percent."

1 DONZIGER

2 Do you see that?

3 A. Yes.

4 Q. The 6.3 personally, that refers  
5 to you?

6 A. Yes, I believe so.

7 Q. And is that on top of the 15 to  
8 20 or is that part of the 15 to 20?

9 A. I believe it is part of it.

10 Q. And you are one of the 15  
11 people?

12 A. Right.

13 Q. Did you discuss anything with  
14 Mr. Grinberg about the terms on which  
15 Elliott would invest?

16 A. I don't remember. I mean, we  
17 never -- I do know we never had a specific  
18 negotiation because they never expressed  
19 interest in investing.

20 Q. And you didn't give him any  
21 initial terms at the meeting?

22 A. I might have mentioned the  
23 terms of other investors that we had  
24 recently brought in.

25 Q. And what were the general terms

1 DONZIGER

2 that you mentioned to Mr. Grinberg in the  
3 meeting?

4 A. Well, I don't remember if I  
5 mentioned terms.

6 Q. Well, what terms were you  
7 prepared to mention that you can't recall  
8 if you mentioned or not?

9 A. You know, I might have  
10 mentioned terms that we had given others  
11 who had made, you know, investments at a  
12 much smaller level than I think Elliott was  
13 capable of making. So I always sort of in  
14 my mind thought if they were interested we  
15 would have a unique -- we would have a  
16 discussion about the terms because it  
17 wouldn't be the same as the others,  
18 probably.

19 Q. The persons who have gotten  
20 interests since the RICO judgment, without  
21 regard to the amounts, what have been the  
22 terms?

23 A. I know the answer to that  
24 question. I'm trying to figure out if it  
25 is privileged or not. So I'm going to

1 DONZIGER

2 decline to answer that and let me figure  
3 out -- I mean, I might easily be able to  
4 tell you that. Let me figure it out and  
5 I'll get back to you.

6 Q. So there are e-mails in which  
7 you offered to send Elliott a packet of  
8 information --

9 A. So your question is terms that  
10 other investors have gotten since the RICO  
11 judgment?

12 Q. Correct.

13 A. Go ahead.

14 Q. In other e-mails you offered to  
15 send Mr. Elliott -- I'm sorry, Mr. Grinberg  
16 of Elliott -- because I need my lunch -- a  
17 packet of information. Did you ever send  
18 him that packet of information?

19 A. No.

20 Q. What did the packet consist of?

21 A. Well, you know, when I send  
22 investors information it sort of depends on  
23 what they are looking for. You know, so it  
24 consists of documents, legal documents,  
25 suggests they go look at the Chevron

1 DONZIGER

2 website to understand Chevron's point of  
3 view, and it could also include a general  
4 description of the case. So it varies with  
5 each investor.

6 Q. Did you have a packet prepared  
7 to send to Elliott?

8 A. Not specifically for Elliott.  
9 My purpose in telling Lee that was that if  
10 they were interested I would have prepared  
11 a packet.

12 Q. But you didn't have a packet  
13 ready to go, for example?

14 A. Well, I have like stuff. It is  
15 not like a packet that is always the same.  
16 I have like my stuff, key documents I guess  
17 you would call it, that I will often send.  
18 But it is all tailored to the individual  
19 needs and interests of what the investor  
20 would want to see. A lot of investors, you  
21 know, obviously do their own due diligence,  
22 they are not going to rely on me.

23 Q. Did you ever send any materials  
24 to Elliott?

25 A. No.

1 DONZIGER

2 Q. The nondisclosure agreement  
3 that you sent to Elliott, is that an  
4 agreement you have used with others or was  
5 it drafted just for Elliott?

6 A. I think it is based on other  
7 agreements, but I think it was modified for  
8 Elliott. I don't remember specifically.

9 Q. Did you have the other  
10 investors that have invested since the RICO  
11 judgment sign that same NDA?

12 A. I think so, but I'm not 100  
13 percent sure everyone signed it.

14 Q. How many investors have there  
15 been since the RICO judgment?

16 A. Didn't you get this information  
17 in Sullivan's discovery, in her production?

18 Q. The number of investors?

19 A. Well, yeah.

20 Q. No, I don't think so.

21 A. She didn't produce that?

22 Q. I don't know what that is that  
23 you are referring to.

24 A. Like the investors.

25 Q. We sent you her production,

1 DONZIGER

2 Mr. Donziger.

3 A. Yeah. I didn't get a chance to  
4 look at it that carefully because it came  
5 in at 10 o'clock at night. I'm not blaming  
6 you. Because I didn't have a lot of time.  
7 Between the time it came in I was pretty --

8 Q. So we are short on time and you  
9 are refusing to let us take a lunch break  
10 for reasons that escape me. So my question  
11 for you is how many people have invested  
12 since the RICO judgment has been issued?

13 A. I don't know if I can answer  
14 that question.

15 Q. Why not? It is just a number.

16 A. Because I think it goes to our  
17 internal operations. Look, you know, I  
18 will put it down and I will research  
19 whether I can answer that.

20 Q. Did you and Ms. Sullivan  
21 discuss terms that you would offer Elliott  
22 during the meeting if they were interested,  
23 if they requested for terms?

24 A. You mean just between the two  
25 of us?

1 DONZIGER

2 Q. Yes, sir.

3 A. I think we did.

4 Q. And what were those terms?

5 A. I don't remember.

6 Q. Nothing? You've got nothing?

7 A. Well, I mean, we had  
8 parameters, like from what we had given  
9 others. I'm sure we started with that. I  
10 don't think we talked about it in too much  
11 detail. I mean, you know, the purpose of  
12 the Elliott meeting was to see if they were  
13 interested.

14 Q. So you say that, if I'm  
15 understanding you correctly, that these --  
16 when you are raising money in connection  
17 with the Ecuador judgment, the terms that  
18 you give to the different investors vary?

19 A. I think that is sort of not  
20 really what the Elliott piece of this  
21 deposition is about. I mean, that is like  
22 a general question about how we do our  
23 operation, so I'm going to decline to  
24 answer that.

25 Q. Did you and Sullivan discuss



1 DONZIGER

2 how much money you wanted to ask for from  
3 Elliott?

4 A. I think we did.

5 Q. And what was that amount?

6 A. I don't think we ever settled  
7 on what we would ask for. I mean, we were  
8 aware of the amount of money Elliott had  
9 invested in the Argentina case, the  
10 Argentina enforcement case, so we were  
11 aware what they were capable of.

12 Q. Do you have any written  
13 documents between yourself and the FDA  
14 regarding terms that would be offered to  
15 Elliott?

16 A. I don't believe so.

17 Q. Do you have written documents  
18 relating to the FDA's authorization of your  
19 attending the Elliott meeting?

20 A. No. I have a general  
21 authorization from my clients to do these  
22 types of meetings. I don't generally get  
23 authorization to do a meeting.

24 Q. For specific meetings?

25 A. For a specific meeting.

1 DONZIGER

2 Q. Do you have to get approval  
3 from your client to offer terms, or is that  
4 at your discretion?

5 A. Well, I can't do a deal without  
6 the approval of the clients. There is  
7 regular communication. With Elliott, we  
8 never got advanced. We had one meeting and  
9 they were not interested.

10 I mean, Katie tried to follow  
11 up on multiple occasions and they just  
12 never responded until that e-mail came in  
13 where they said they weren't interested.  
14 So until you sort of feel out what is going  
15 on, you can't really know how to negotiate,  
16 I mean, other than just sort of the  
17 benchmark of prior deals.

18 Q. The agreements with funders  
19 post the RICO judgment, did you sign any of  
20 those agreements yourself?

21 A. I did, but not as a party.

22 Q. You signed them as the FDA's  
23 representative?

24 A. I'm not sure -- I'm not sure if  
25 I was a witness or whatever, but the

1 DONZIGER

2 parties are the FDA and the investor. I  
3 think that some of the investors wanted my  
4 signature on it just for reasons of comfort  
5 because like they wanted me to acknowledge  
6 the agreement.

7 Q. And what law governs these  
8 investor agreements?

9 A. I think it is in the  
10 agreements. I think it depends on the  
11 agreement.

12 Q. So multiple different  
13 jurisdictions can govern these interests?

14 A. Well, in any one agreement  
15 there is one jurisdiction.

16 Q. But they're not consistent  
17 across agreements?

18 A. They have changed over time  
19 depending, and also investors also  
20 negotiate from their point of view, so they  
21 are not all the same.

22 Q. And if the laws conflict among  
23 the investor agreements?

24 A. I can't answer that question.  
25 I mean, you know, I don't think, generally

1 DONZIGER

2 speaking, the laws conflict. I mean, these  
3 are contracts.

4 But if you are asking if there  
5 are disagreements between interests,  
6 between, say, two or more investors, you  
7 know, that will be resolved like any other  
8 conflict, I mean, either through a  
9 negotiation or a lawsuit or whatever. I  
10 mean, I don't think there is disagreements  
11 or conflicts, but if there were to be,  
12 that's how it would be resolved.

13 Q. And your interest which was in  
14 the retainer agreement from January of  
15 2011, that continues to be governed by New  
16 York law? You haven't signed an agreement  
17 agreeing that it would be governed by some  
18 other law?

19 A. Well, I told you there is a  
20 superseding agreement, so I don't know if  
21 it is New York or some other place. I'm  
22 going to try and get you that document.

23 Q. The superseding agreement?

24 A. Yeah.

25 Q. And is there only one

1 DONZIGER

2 superseding agreement or have there been  
3 multiple?

4 A. I think there is only one.

5 Q. And in the superseding  
6 agreement did it change your interest in  
7 any way from the 2011 retainer?

8 A. No.

9 Q. So it is exactly the same as it  
10 was?

11 A. I believe it is, yeah.

12 Q. The 2011 retainer provides that  
13 there is going to be pro rata reductions in  
14 percentages if additional funders come on.  
15 Does the new retainer contain a similar  
16 provision?

17 A. I don't believe so.

18 MS. NEUMAN: I'm going to go  
19 off the record just for a minute because I  
20 need to find a document. Go off the  
21 record.

22 THE VIDEOGRAPHER: The time is  
23 1:49. We are going off the record. This  
24 will be the end of media file number four.

25 (Recess taken.)

1 DONZIGER

2 THE VIDEOGRAPHER: The time is  
3 1:50. We are back on the record. This is  
4 the beginning of media file five.

5 BY MS. NEUMAN:

6 Q. Mr. Donziger, in your discovery  
7 responses you did not identify any  
8 ownership of any stocks or bonds or assets  
9 of that nature. Do you own any such  
10 assets?

11 A. Not that I'm aware of.

12 Q. Did you own any such assets at  
13 the time of the RICO judgment?

14 A. Yes.

15 Q. And what has happened to those  
16 assets?

17 A. What happened was I had an  
18 account at Schwab and Schwab disinvited me  
19 to be their client, just like Chase did, so  
20 I liquidated the account. I don't own  
21 anything anymore.

22 Q. Are you a beneficiary of any  
23 trusts of any kind?

24 A. Not that I'm aware of.

25 Q. Do you have a contingent

1 DONZIGER

2 interest in any asset other than the  
3 Ecuadorian judgment?

4 A. You mean like a lawsuit? Like  
5 another lawsuit?

6 Q. It could be any kind of --

7 A. I don't believe so.

8 Q. -- contingent interest.

9 I'm going to mark as Exhibit  
10 5319 a document relating to disbursements  
11 from TD account 2265, which was not  
12 identified in your discovery responses.

13 (Plaintiff's Exhibit 5319  
14 marked for identification.)

15 Q. Are these case-related  
16 expenditures, or something else?

17 A. I'm going to say this: This  
18 gets into like my First Amendment issue,  
19 but I'm going to answer this generally,  
20 which is the following: We are not getting  
21 into details about what these are. These  
22 are mostly case-related, but not all.

23 Q. Could you indicate which ones  
24 are not case-related?

25 A. The only one not as far as I

1 DONZIGER

2 can tell is Kevin Koenig.

3 Q. And what is that related to?

4 A. Just a personal thing between  
5 Kevin and I. I was helping him with  
6 something.

7 Q. And when it existed, was TD  
8 Bank account 2265 the account you deposited  
9 money into to use for case expenses?

10 A. I never had a system that was  
11 that clear, but I did use this account to  
12 pay out case expenses from time to time.  
13 Often what would happen is I would be paid  
14 or I would get money in hoping to use it  
15 for my living expenses and then we would  
16 run out of money and then I would  
17 personally fund the case from these types  
18 of expenses at this level, generally at  
19 this level.

20 Q. Did these expenses, were they  
21 paid from funder money or from your money,  
22 in 2014, 2015 and 2016?

23 A. This was my money, but it is  
24 possible -- wait, what year is this?

25 Q. These go from September 2014



1 DONZIGER

2 through April of 2016. You received the  
3 \$488,000 from Mr. Lenczner, if it refreshes  
4 your recollection, starting in --

5 A. So the answer to your question  
6 is I don't believe -- I think most of these  
7 were personal. Well, I will say all of  
8 them were personal because I got money into  
9 this account. I was supposed to use it on  
10 myself, my family.

11 Q. So you were personally paying  
12 Mr. Page, for example?

13 A. From time to time, yes.

14 Q. In your response to  
15 Interrogatory No. 3, you said your only  
16 sources of income are "remuneration  
17 authorized by my clients and paid out of  
18 litigation expense funds raised with my  
19 assistance, a modest monthly income  
20 generated by two properties, Argyle  
21 Knoxville and Lewmike LLC."

22 Do you recall that?

23 A. Yes.

24 Q. For the time period from 2014  
25 to the present, is that an accurate

1 DONZIGER

2 statement or does it change year to year?

3 A. Well, it is accurate over that  
4 period of time. If your question is, is  
5 there other sources of income at any time  
6 during that time --

7 Q. Yes, sir.

8 A. I don't believe so, but I  
9 wouldn't, you know, to the best of my  
10 knowledge, no, but, you know, it is a lot  
11 of years, and I occasionally try to do  
12 other things but I really haven't -- I  
13 can't -- I don't think I did anything else  
14 during those years.

15 Q. And do you own any interest in  
16 any properties other than Argyle Knoxville  
17 and Lewmike LLC?

18 A. Well, there is one other  
19 property I think I mentioned in my  
20 responses.

21 Q. What would that be?

22 A. It is a property in Florida  
23 that I inherited when my dad passed away.

24 Q. And what's the name of it?

25 A. It is not on there? I thought

1 DONZIGER

2 I put it in my responses.

3 Q. Does it provide income or it is  
4 just a property?

5 A. No, it doesn't provide income.

6 Q. What's the name of the  
7 property?

8 A. I don't know. I mean, I might  
9 have put it on that.

10 Q. St. Augustine, Florida?

11 A. Yeah, I think that's it. It is  
12 a property -- it is a piece of land.

13 Q. And what's the nature of your  
14 ownership interest, do you own it outright?

15 A. No, I own it with some other  
16 people who were daughters of a partner of  
17 my dad who passed away.

18 Q. Do you have the right to sell  
19 that property?

20 A. Subject to approval or  
21 agreement with partners, yeah.

22 Q. What is the value of that  
23 property?

24 A. I would estimate it is worth  
25 \$800,000, and I own half of it.

1 DONZIGER

2 Q. What is the value of your  
3 interest in the Argyle property?

4 A. I would estimate it is about 1  
5 to \$1.1 million.

6 Q. And do you have the right to  
7 sell the Argyle property?

8 A. Subject to the same conditions  
9 as the other.

10 Q. Is it owned with the same  
11 co-owners?

12 A. Yeah.

13 Q. And is your ownership interest  
14 50 percent?

15 A. Yes.

16 Q. And is the 1.1 million your  
17 interest or the whole?

18 A. My interest. The whole  
19 interest is double that.

20 Q. What about Lewmike?

21 A. Lewmike is a little more  
22 complicated. There is multiple partners  
23 and I think I own 15 percent.

24 Q. And the value is?

25 A. I don't know much about that

1 DONZIGER

2 one. I don't think it's -- I don't know.  
3 I could find out. Do you want me to find  
4 out? That certainly goes to the state of  
5 my finances. Do you want me to find out?

6 Q. Sure. And these estimates of  
7 the monthly income from Lewmike and Argyle,  
8 have they been relatively consistent since  
9 2014?

10 A. Yes. Argyle is based on lease  
11 money that is generated every month,  
12 because it is a shopping -- it is like a  
13 strip shopping center and there is people,  
14 stores in there, paying monthly lease  
15 money.

16 Q. And then you get a percentage?

17 A. I get, yeah.

18 Q. So if somebody doesn't pay,  
19 then you get less?

20 A. Yes. But these are reputable  
21 national chains, so they pay.

22 Q. So it is consistent?

23 A. Yeah, it is consistent.

24 Q. The time that you spend working  
25 on fundraising and doing things like the

1 DONZIGER

2 Elliott meeting, that is covered by your  
3 retainer? You don't bill separately for  
4 that with a timesheet?

5 A. No.

6 Q. So those types of activities  
7 are covered by your retainer?

8 A. Yes.

9 Q. When you get reimbursed for  
10 expenses, the FDA approves those expenses?

11 A. On the sort of pretty rare  
12 occasion I get reimbursed for expenses, I  
13 put it in an invoice, get paid, when I do  
14 an accounting with the clients they know  
15 what the expenses are and they approve it.

16 Q. So the money from the Lenczner  
17 firm that was transferred to you, was any  
18 portion of that money to pay your retainer?

19 A. I think this is a little bit  
20 beyond the scope.

21 Q. I don't think so.

22 A. Why not?

23 Q. Because the issue relates to  
24 compliance with the Court's injunction.

25 A. Okay. I will answer it. The

1 DONZIGER

2 answer to that question is yes.

3 Q. And was the money that came  
4 through the Lenczner firm also to reimburse  
5 you for expenses?

6 A. In part, yes. But to repeat,  
7 and I hope I have made myself clear about  
8 this, I'm owed a lot of money for  
9 unreimbursed expenses through the years,  
10 like a lot of money that I put into the  
11 case and never got paid out for because the  
12 clients never had money and we never had  
13 enough money.

14 Q. And you don't view that as  
15 covered by your contingency?

16 A. Not at all. I mean, that is  
17 out of pocket. I mean, lawyers who do  
18 contingency fee work generally don't --

19 Q. They don't front the costs?

20 A. It depends on the deal.

21 Q. Isn't that the nature of why  
22 they are entitled to the contingency?

23 A. No, it is the labor that they  
24 are fronting. They are not being paid  
25 hourly, so they are doing free labor, but

1 DONZIGER

2 the actual out of pocket in the contingency  
3 fee model is often paid by the client.

4 Q. But you are doing neither free  
5 labor nor -- you want to be reimbursed for  
6 your expenses and get a retainer and get a  
7 contingency; that's your agreement?

8 A. Reimbursement of expenses, yes.

9 Q. Retainer?

10 A. Get a retainer, a monthly  
11 retainer.

12 Q. And a contingency?

13 A. Absolutely.

14 But to answer your question,  
15 you asked me a question about Lenczner's  
16 transfers, so the answer is I tried to pay  
17 my retainer out of that but it was not  
18 enough money, and I think if one were to  
19 reconstruct that period of time it would  
20 not -- it would not be a consistent payment  
21 by any means.

22 Q. When did your retainer, it was  
23 not \$25,000 at the time of the RICO trial,  
24 when did it go to \$25,000?

25 A. I don't remember. What was it



1 DONZIGER

2 then?

3 Q. It varied and as I recall the  
4 most, at the end, was 20.

5 A. Okay. I mean, I don't know.

6 Q. And why was the Lenczner firm  
7 paying you your retainer?

8 A. I know the answer to that  
9 question. I'm trying to figure out if it  
10 is privileged. I think I'm going to hold  
11 off on that on First Amendment grounds, as  
12 it gets into our internal operations.

13 Q. So Lenczner was passing on to  
14 you your share of money that came from  
15 outside funders, they weren't paying you  
16 money from their pockets; is that fair?

17 A. I need to not answer that, but  
18 I will write it down and I will get back to  
19 you if I can answer it.

20 Q. Mr. Donziger, I'm going to mark  
21 as Exhibit 5320 a summary prepared from  
22 documents that you produced during RICO. It  
23 shows funder money that went into your  
24 accounts at Chase.

25 (Plaintiff's Exhibit 5320

1 DONZIGER

2 marked for identification.)

3 Q. The accounting that you  
4 described to us earlier that is  
5 substantially complete, would that cover  
6 how these funds were used?

7 A. I don't know, but I don't think  
8 necessarily in a complete way, because a  
9 lot of these funds were when Kohn, Swift &  
10 Graf managed the money.

11 Q. When did you take over  
12 management?

13 A. When Kohn, Swift & Graf left  
14 the case. Well, I wouldn't say management,  
15 I became -- when Kohn Swift left I had to  
16 do my best to look for funds for the  
17 clients; prior to that Kohn Swift pretty  
18 much paid case expenses.

19 Q. So to be clear, these are  
20 monies that are deposited into your bank  
21 accounts?

22 A. Yeah.

23 Q. As opposed to into Kohn, Swift  
24 & Graf's bank accounts, some of it comes  
25 from Kohn Swift, but it is all money that

1 DONZIGER

2 went into your accounts. So to the extent  
3 that you spent this money on case-related  
4 expenses out of your accounts, would that  
5 be covered by the substantially complete  
6 accounting?

7 A. I don't know, because I don't  
8 know if it goes back this far. But I will  
9 say this: Some of this money had nothing  
10 to do with the Ecuador case. Beyond that,  
11 I think this is beyond the scope of this  
12 deposition.

13 Q. What makes you say that?

14 A. I just know it. There were  
15 other things I was working on at the time.  
16 And this is beyond the scope of the  
17 deposition. But, I mean, this is not all  
18 Ecuador.

19 Q. Do you use your website to  
20 raise money?

21 A. No.

22 Q. Do you have --

23 A. I mean, other than to, you  
24 know, promote the case generally. I don't  
25 raise money through the website.

1 DONZIGER

2 Q. Do you collect any money  
3 through the website?

4 A. No.

5 Q. Have you ever?

6 A. No.

7 Q. There is nothing you click on  
8 in your website?

9 A. There might be. I don't know.  
10 I have a couple of websites.

11 Q. And do you raise money pursuant  
12 to either of them?

13 A. No.

14 Q. And you haven't since the RICO  
15 judgment?

16 A. Not that I know. I don't  
17 believe so. I mean, there might be a  
18 click-through on one of them if I remember  
19 correctly. I don't think anyone has given  
20 any money.

21 Q. And what are the sites?

22 A. DonzigerLaw and I think  
23 StevenDonziger.com.

24 Q. And is it DonzigerLaw.com or  
25 something else?

1 DONZIGER

2 A. I think it is .com.

3 Q. Have you signed any agreements  
4 related to the Ecuador litigation in terms  
5 of books or movies or other --

6 A. I'm not going there.

7 Q. -- publications?

8 A. Listen, that's just so beyond  
9 the scope. I have zero income from those  
10 types of sources, I will say that.

11 Q. And have you signed any  
12 agreements to get income from those types  
13 of sources that relates to the Ecuador  
14 litigation?

15 A. There is no agreement I signed  
16 that is income producing with regard to any  
17 media-related work at this point, although  
18 I obviously have a right to do that, but I  
19 have no such agreement.

20 Q. I'm sorry, you have no  
21 agreements or you haven't made any money  
22 from the agreements that you do have?

23 A. I have no agreements. I mean,  
24 you know, no.

25 Do you have any more questions

1 DONZIGER

2 about Elliott? You can get your lunch.

3 Q. Well, I would like to take a  
4 lunch break and reconvene the deposition.

5 A. No, I want to finish on  
6 Elliott. Please finish on Elliott.

7 Q. I'm showing you Exhibit 5321  
8 that Ms. Sullivan produced.

9 (Plaintiff's Exhibit 5321  
10 marked for identification.)

11 Q. Who is Mr. Aulestia?

12 A. I'm not getting into that.  
13 It's not part of this deposition.

14 In any event, it is part of our  
15 internal operations.

16 Q. Do you direct his activities?

17 A. We were colleagues. We worked  
18 together.

19 Q. So do you direct his activities  
20 or does someone else?

21 A. I'm not getting into that.

22 Q. Why would he provide a budget  
23 to Ms. Sullivan?

24 A. I don't know.

25 Q. You don't know anything about

1 DONZIGER

2 this?

3 A. No. I have never seen that  
4 before.

5 Q. Mr. Donziger, can you pull back  
6 up Sullivan Exhibit 9.

7 A. What is it again?

8 MS. CHAMPION: Sullivan Exhibit  
9 9. It should be about the eighth or so  
10 document in your pile, maybe tenth. It is  
11 the e-mail chain starting with the e-mail  
12 from --

13 THE WITNESS: Yeah, I got it.  
14 Okay.

15 Q. Why are all these people being  
16 informed of the Elliott meeting?

17 A. I don't know. I mean, I think  
18 because Ms. Sullivan sent that initial  
19 e-mail to all of these people.

20 Q. Yes. Do you know why she sent  
21 it to this group?

22 A. I think she regarded these  
23 people as part of the team. My personal  
24 interpretation, she was trying to boost  
25 morale. But, I mean, you would have to ask

1 DONZIGER

2 her. You probably already have.

3 Q. And are all of these people in  
4 your view part of the Ecuador case team?

5 A. Well, I'm not going to get into  
6 that. That's our internal operations. As  
7 you know, there is lots of people who work  
8 on all -- some or parts of this in all  
9 different kinds of capacities. I'm not  
10 going to get into our internal operations.

11 Q. In your discovery responses, in  
12 response to some of the requests that Judge  
13 Kaplan ordered you to answer, you put "no  
14 response required." Why is that? What  
15 does that mean as you used that phrase?

16 A. I think they were so far afield  
17 and burdensome that I came to the  
18 conclusion that no response was required.

19 Q. Even on requests that the Court  
20 ordered you to answer?

21 A. What are you talking about?

22 Q. Well, you recall that Judge  
23 Kaplan ordered you to answer specific  
24 requests, yes?

25 A. Yes.



1 DONZIGER

2 Q. And in response to some of  
3 those you wrote "no response required."

4 A. I don't know that sitting here.

5 Q. Can you look at Exhibit 5307.  
6 Actually, we are going to have to take a  
7 lunch break pretty soon.

8 A. So, listen, I am not going to  
9 stay past lunch, so you can keep going, and  
10 I would urge you to stick to Elliott. Do  
11 you have more questions about Elliott?

12 Q. We are past lunch,  
13 Mr. Donziger. You are just inconveniencing  
14 everyone else.

15 A. No, you have -- don't let me go  
16 through this again. People can go get  
17 lunch and sit here and eat. That's not on  
18 me.

19 MS. CHAMPION: The court  
20 reporter can't eat lunch while he is taking  
21 down the testimony.

22 A. Then that's on you because you  
23 wasted all the morning. So keep going and  
24 ask me about Elliott. Do you have more  
25 questions about Elliott?

1 DONZIGER

2 Q. Mr. Donziger, I'm going to ask  
3 you about your discovery responses and I am  
4 going to take a break in a minute.

5 In response to Interrogatories  
6 21, 23, 24 and 25, do you see you put "no  
7 response required"? Are you looking at  
8 that exhibit?

9 A. Do you have a copy?

10 Q. It's in your stack.

11 A. What number is it?

12 Q. 5307.

13 A. Okay. So what are you -- what  
14 are these in response to, the "no response  
15 required"? What is 18, 21 and 22?

16 Q. So the Court ordered you to  
17 answer fully items 21, 23, 24 and 25, and  
18 you see where you put "no response  
19 required"?

20 A. Yeah. I don't know what I was  
21 thinking. It might be a First Amendment  
22 issue, it might be a privilege issue, or  
23 these pending motions. I can get back to  
24 you on that. I don't know.

25 Q. So you don't know what it

1 DONZIGER

2 means?

3 A. I think I know what it means.  
4 I just don't know what it means as I sit  
5 here right now. I've got to go look at it.

6 Q. And you are putting that  
7 despite the Court's order that you answer  
8 those requests?

9 A. Please, okay, I respond to  
10 court orders. I don't know. I will have  
11 to look at it. I'm not deliberately  
12 flouting a court order. I mean, there  
13 might be no response required because of a  
14 pending motion and then once the motion  
15 gets resolved I would be required to  
16 respond.

17 Again, I would really urge you  
18 to finish. Ask me about Elliott. Do you  
19 have anything else?

20 Q. Mr. Donziger, I'm entitled to  
21 explore your discovery responses in this  
22 deposition. It was part of the Court's  
23 order. It was part of our stipulation.  
24 I'm going to take a break here in a minute  
25 and get something to eat. I'm happy to do

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DONZIGER

it in short order. I'm sure the court reporter is going to have to take a break.

A. Let's take a break. I will make a couple of phone calls and can we convene in 15 minutes, does that work?

I'm sorry, by the way, I don't want to embroil you in a situation I have with these people. You need to eat. So let's take 15 minutes and try and if that's not enough time we will keep eating and then we will come back.

MS. NEUMAN: We will go off the record at 2:18.

(Luncheon recess: 2:18 p.m.)

1 DONZIGER

2 A F T E R N O O N S E S S I O N

3 2:43 p.m.

4 S T E V E N D O N Z I G E R, resumed.

5 THE VIDEOGRAPHER: We are back  
6 on the record. The time is 2:43. This is  
7 the a continuation of media file five.

8 CONTINUED EXAMINATION

9 BY MS. NEUMAN:

10 A. Can I make a quick statement?

11 Q. Can I stop you?

12 A. Just in response to one of your  
13 prior questions, I think it was the last  
14 question, why I put "no response required."

15 Q. Yeah, okay, that's what I'm  
16 going back to.

17 A. I want to explain that because  
18 I figured out why I put that.

19 Q. Perfect.

20 A. And the reason is Judge Kaplan  
21 divided the responses up between compliance  
22 requests and money judgment requests, so  
23 those were the compliance requests --  
24 request by Chevron that he stayed. That's  
25 why I did that. Now, you might disagree

1 DONZIGER

2 with my interpretation, but that was the  
3 reason behind that.

4 Q. Okay. So I think you might  
5 have gotten confused with the numbering or  
6 something, so I want to show you, because I  
7 want to ask you to give us real responses  
8 this is Judge Kaplan's order, Docket 2020,  
9 and if you read this paragraph, you will  
10 see he says answer fully in the ROGs 21 to  
11 25.

12 A. Okay.

13 Q. Do you see that now, sir?

14 A. Yes. But it says, maybe we  
15 just disagree on this, but it says "The  
16 Donziger Defendants are required to comply  
17 with these requests and items only to the  
18 extent they are producing documents and  
19 providing information bearing on the  
20 attempt to obtain funds from Elliott  
21 Management Company."

22 Q. Okay. So when you say "no  
23 response required," you're saying there are  
24 no responsive documents as related to  
25 Elliott and you're not otherwise required

1 DONZIGER

2 to answer?

3 A. I think that's what I'm doing.  
4 But this is a lot. What I will do here is  
5 look again, I'm going to add this to my  
6 list, and I will get back to you promptly,  
7 and if I need to supplement this prior to  
8 the hearing on Thursday, I will.

9 Q. Because one thing that is in  
10 here is identifying all communications.

11 A. With Elliott?

12 Q. Related to the Elliott, which I  
13 think we have covered today, but since  
14 previously you put "no response required"  
15 I'm just asking you to relook.

16 A. I will. I will do that  
17 promptly. I want you to be as prepared as  
18 possible for Thursday.

19 Q. Now, do you still have in front  
20 of you the combined set? I think we marked  
21 the combined set as Exhibit 5308, I want to  
22 say. Are you finding it, Mr. Donziger?

23 A. The combined set of -- remind  
24 me.

25 Q. Our requests and your

1 DONZIGER

2 responses.

3 A. This (indicating)?

4 Q. Is it 5308?

5 A. Yeah.

6 Q. Yes, sir. Can you go to page  
7 19.

8 A. It's not Bates stamped.

9 Q. No, page.

10 A. Page 19, of your document,  
11 okay.

12 Q. Well, we just took your  
13 responses, I mean, we took -- yeah, we took  
14 your responses and interlineated the  
15 question. Because it is confusing, it was  
16 just the response.

17 A. Okay, got it.

18 Q. Okay. So you mentioned that in  
19 the Elliott meeting when you mentioned the  
20 33 million, that you got that number from  
21 some trial document. Did I hear you  
22 correctly?

23 A. Yes.

24 Q. Is this the document that you  
25 are referring to?



1 DONZIGER

2 A. I think it is.

3 Q. So in the Commitment Amounts  
4 column, were all those amounts actually  
5 committed, hence you used that number with  
6 Elliott?

7 A. So if you were to ask me how  
8 much money have we raised in actual money,  
9 I don't know if I could give you a  
10 completely accurate answer. I think the  
11 column on the left, based on my  
12 recollection, is accurate. But, remember,  
13 the Kohn Swift contribution was out of  
14 pocket, it wasn't an investor.

15 So sometimes people say well,  
16 how much have investors put in. You know,  
17 Kohn Swift was a contingency fee law firm.  
18 And the column on the right --

19 Q. Right. So they were covering  
20 the expenses?

21 A. Say that again.

22 Q. They were covering the  
23 expenses?

24 A. Yes.

25 Q. As part of their contingency

1 DONZIGER

2 agreement?

3 A. Yes. The column on the right,  
4 for example, Burford never contributed 15.  
5 I mean, they never invested 15, they  
6 invested 4.

7 Q. According to the Amazonia  
8 documents, DeLeon invested 21 million  
9 versus 2, no, no, sorry, Torvia, which is  
10 down here for 7.250.

11 A. So what is your question?

12 Q. Let me ask a different  
13 question.

14 Why did you use this 33 million  
15 with Elliott if it's not accurate?

16 A. I wasn't thinking clearly and I  
17 didn't have the information in front of me,  
18 and I, for some reason, I believe that we  
19 raised about 25 or \$30 million and it is  
20 possible that not all of -- this chart does  
21 not encompass everything. But that's the  
22 kind of information that I really brought  
23 in Josh Rizack and Katie Sullivan to help  
24 manage. So I don't know the exact number.

25 Q. I'm going to hand you a

1 DONZIGER

2 document that was previously marked as  
3 Plaintiff's 7033A. It is minute meetings  
4 from the Executive Committee of UDAPT.

5 UDAPT and the Assembléia are  
6 the same organization, yes?

7 A. I don't know.

8 Q. Well, the --

9 A. I have no contact with UDAPT  
10 anymore and haven't for quite some time.

11 Q. As far as you know, is there  
12 any distinction between the Assembléia and  
13 UDAPT? Are they just the name that people  
14 would give them differed over time?

15 A. I don't know. I know what  
16 UDAPT is. I don't know if the Assembléia  
17 still exists.

18 Q. Okay. Do you have any reason  
19 to believe they aren't the same  
20 organization?

21 A. I don't know one way or  
22 another. I don't know one way or another.

23 Q. So in these meeting minutes  
24 from 2013, it states on page 2 of 15,  
25 "Mr. Donziger continues saying that years

1 DONZIGER

2 ago we had a serious crisis due to the fact  
3 that Mr. Kohn, who is financing the case,  
4 in 2009 chose not to continue."

5 Do you see that? It is the  
6 second full paragraph on that page.

7 A. Uh-huh.

8 Q. It then says --

9 A. Is this marked from the  
10 original RICO case?

11 Q. Yes.

12 A. Okay.

13 Q. That's the trial exhibit  
14 number. Is that what you are asking me?

15 A. Yeah.

16 Q. That's my understanding of that  
17 sticker.

18 This paragraph indicates that  
19 you are representing at this UDAPT meeting  
20 that you had raised \$25 million since Kohn  
21 stopped financing. Does that refresh your  
22 recollection as to the amount raised at  
23 least as of the RICO trial?

24 A. No.

25 Q. Do you know where that \$25

1 DONZIGER

2 million number came from?

3 A. I don't remember. I don't  
4 remember anything about this meeting.

5 Q. Go to page 5 of 15. This is a  
6 meeting where they resolved that you would  
7 no longer be the U.S. representative. Does  
8 that refresh your recollection of the  
9 meeting?

10 A. I remember a meeting of that  
11 nature.

12 Q. And in paragraph E on page 5 of  
13 15 --

14 A. Paragraph E of 5?

15 Q. Uh-huh.

16 A. Uh-huh.

17 Q. It says they are going to  
18 accept the return of 1.33 points that had  
19 been assigned to Steven Donziger. Do you  
20 see that?

21 A. Yeah. I'm going to object to  
22 the question about this document. I think  
23 we're pretty far afield.

24 Q. Well, you realize your interest  
25 is in a constructive trust to Chevron,

1 DONZIGER

2 right?

3 A. Yes.

4 Q. And this relates to what your  
5 interest is.

6 A. Well, my interest, I have  
7 already testified, my interest is 6.3. I  
8 mean, this is --

9 Q. And that's without regard to  
10 the return of the 1.3?

11 A. Rest assured, Chevron, I don't  
12 believe that ever happened. I don't  
13 believe it was ever returned. My interest  
14 is 6.3.

15 Q. So at page 3 in the meeting,  
16 the minutes show you as saying "We are  
17 preparing an analysis and specifics of how  
18 the \$25 million contributed by Russ DeLeon  
19 was spent. He has the money and we have  
20 survived thanks to him."

21 A. You are talking about this  
22 document?

23 Q. Yes, sir. "The failures in  
24 handling of the money up north is a failure  
25 for which I take responsibility."

1 DONZIGER

2 Do you see that paragraph?

3 A. Do you have a question?

4 Q. Yes. Does that refresh your  
5 recollection of Torvia and Mr. DeLeon  
6 giving \$25 million?

7 A. You know, first of all, I'm not  
8 going to answer questions about this  
9 document other than to say this:  
10 Mr. DeLeon gave a certain amount of money,  
11 I believe you know what that is because you  
12 struck an agreement, you meaning your  
13 client, struck an agreement with him to end  
14 his participation in the case, and I'm sure  
15 he told you what he had or had done, and if  
16 he hadn't, I don't have that information at  
17 my fingertips.

18 He was, I testified before, I  
19 believe during the RICO trial, that he was  
20 our main funder for a period of time. He  
21 was the main funder of the case.

22 Q. There were -- I'm going to mark  
23 as Exhibit 5322 just a summary chart of  
24 cost payments made in the Canada action.

25 (Plaintiff's Exhibit 5322

1 DONZIGER

2 marked for identification.)

3 Q. You are aware that Chevron  
4 Canada paid costs to the LAPs during the  
5 Canada action? Canada has rules about  
6 costs?

7 A. These are payments Chevron made  
8 to who?

9 Q. The Lago Agrio plaintiffs.

10 A. Okay.

11 Q. You are involved in the Canada  
12 action, right, or not?

13 A. Well --

14 Q. Do you do any work on the  
15 Canada action, regardless of what it is?

16 A. Yes. The answer is yes. I  
17 don't want to get into the nature of it,  
18 but yeah, I talk to lawyers and try to  
19 help. I'm not obviously a lawyer in Canada  
20 and don't appear in court and I don't, you  
21 know, give legal advice based on Canadian  
22 law, but we coordinate.

23 Q. With Mr. Lenczner?

24 A. And others.

25 Q. And do you coordinate with



1 DONZIGER

2 Mr. Lenczner on more than just -- well, let  
3 me phrase that differently.

4 Do you coordinate with  
5 Mr. Lenczner on the substance of the Canada  
6 case, like pursuing the Canada case itself?

7 A. I'm not getting into that.  
8 That's our internal operations.

9 Q. So you're aware that in Canada  
10 costs get awarded when motions are won and  
11 lost and so forth?

12 A. Yes, I'm aware of that.

13 Q. And you are aware that on some  
14 motions where the Lago Agrio plaintiffs  
15 prevailed, they were awarded costs?

16 A. I don't remember.

17 Q. Did you receive any portions of  
18 these funds?

19 A. No.

20 Q. How do you know?

21 A. When you say "you," you mean  
22 Steven Donziger?

23 Q. Yes, or your law firm.

24 A. No, not that I'm aware of.

25 Q. So these weren't part of the

1 DONZIGER

2 monies that Mr. Lenczner's firm paid to  
3 you?

4 A. I have no knowledge that they  
5 would have been and I don't believe they  
6 were.

7 Q. Do you have any interest in a  
8 Donpat Gate Parkway LLC?

9 A. That rings a bell, but I don't  
10 know. I don't believe so. It kind of  
11 rings a bell, something my dad did.

12 Q. How would you determine if you  
13 had any interest?

14 A. I would have to investigate. I  
15 don't believe so, but I can try to find  
16 out. What's the name of it?

17 Q. Donpat, D-o-n-p-a-t, Gate  
18 Parkway LLC.

19 A. Oh, that might be the name of  
20 the -- I don't know. I will investigate  
21 that and get back to you.

22 Q. Do you have any interest in  
23 Montecito Medical Invest Co. LLC?

24 A. I might. As a general matter,  
25 when my father passed, he had lots of

1 DONZIGER

2 things going on and I think some of them  
3 were worthless. That might fall in that  
4 category, but I will investigate and get  
5 back to you.

6 Q. He had -- these were all assets  
7 that would have been probated or they  
8 passed through a trust?

9 A. I'm not sure. I mean, there  
10 was a trust when he passed and then, you  
11 know, I took possession of these properties  
12 in the trust.

13 Q. And that was before the RICO  
14 judgment or after?

15 A. Before.

16 Q. Since the RICO judgment, have  
17 you inherited any property?

18 A. No.

19 Q. Has any property been gifted to  
20 you?

21 A. No.

22 Q. Have you forgiven any loans or  
23 debts?

24 A. No, not that I'm aware of.

25 Q. So did you want to write down

1 DONZIGER

2 Montecito Medical or you did that already?

3 A. I did.

4 Q. What about Florida Bank Group?

5 A. Yeah, I don't know what that  
6 is. Is that the same category? I mean,  
7 are you asking me if I own an interest in  
8 Florida Bank Group?

9 Q. Yes.

10 A. I don't know.

11 Q. Do you have a way to verify?

12 A. I will try.

13 Q. Do you own an interest in Bear  
14 Creek Manufactured Home?

15 A. Not that I'm aware of.

16 Q. Do you own an interest in The  
17 Greens at Mumford LP?

18 A. I think I do. But, again, I  
19 think it is -- I don't think it is -- I  
20 don't know. I will investigate. I think  
21 all of these are worthless investments that  
22 my father had.

23 Q. That currently have no market  
24 value?

25 A. That's what I believe, but I'll

1 DONZIGER

2 check.

3 Q. The value of your -- you own  
4 one apartment in New York?

5 A. Yes.

6 Q. And what is the value of that?

7 A. I don't know. I would  
8 estimate -- I don't know. I think I put  
9 that in my responses.

10 Q. Yes, sir.

11 A. Didn't I?

12 Q. I don't think you put the  
13 value.

14 A. It is a two bedroom Upper West  
15 Side apartment, seventh floor, looks at  
16 another building across the street. It is  
17 probably worth 1.8 or 1.9 is my estimate.

18 Q. Do you have any agreements with  
19 Bill Guttenberg related to the Ecuador  
20 case?

21 A. Yes.

22 Q. What is the nature of that  
23 agreement?

24 A. Actually, I'm not going to get  
25 into that. I already said that.

1 DONZIGER

2 Q. This is an agreement you have  
3 but pursuant to which you have made no  
4 money?

5 A. I have not made any money on  
6 that agreement, no.

7 Q. I asked you about book rights,  
8 and am I remembering correctly that you  
9 have not sold any book rights pursuant to  
10 which you have received any money?

11 A. That's correct.

12 Do you have more questions  
13 about the Elliott meeting? Because I'm  
14 kind of -- I don't want to --

15 Q. You are feeling peaked from the  
16 lack of lunch?

17 A. Let me explain. I don't want  
18 to get in a bad way with you, and I  
19 apologize if prior to lunch I was a  
20 little -- I wasn't as polite as I normally  
21 am, but I do want to say this in all  
22 seriousness. I want to be cooperative on  
23 the Elliott thing and on my personal  
24 finance stuff. I will reiterate that I  
25 encourage you to finish up with -- do you

1 DONZIGER

2 have more Elliott question meetings? If  
3 you do, please ask them.

4 I don't feel comfortable going  
5 beyond what I perceive to be the scope of  
6 this deposition. You know, I have been  
7 here a bunch of hours today. I know you  
8 have allotted the whole day for the  
9 deposition. I think it might be better if  
10 you don't have more questions about Elliott  
11 to end the deposition.

12 I think you guys are going to  
13 file a motion to compel anyway is my guess.  
14 Let's litigate this and if Judge Kaplan  
15 rules the way you probably think he will,  
16 we can take the rest of the time and deal  
17 with those questions. In the meantime, I  
18 can get these documents and it would be  
19 more productive.

20 But, I mean, I'm here to answer  
21 questions about Elliott and about my  
22 finances. I sort of told you about my  
23 finances. There is not much more. I will  
24 get back to you on this stuff. But I just  
25 don't think we need to go much more. It

DONZIGER

sort of feels like we are at the end here and I feel like a lot of these questions like about UDAPT and about costs in Canada are really far afield. So if you have more questions about Elliott, please ask them now.

Q. Okay, give me just a second.

A. Okay.

Q. Vis-à-vis Elliott, you understood that any documents where you were asking Elliott to invest or related to the Elliott investment were relevant to your compliance with the injunction, the March 2014 injunction?

A. Say that again. I don't understand your question.

Q. You understood that documents --

A. Understood when? At the time of the Elliott meeting?

Q. Yes.

A. Okay. So just try to rephrase the question if you don't mind, please.

Q. Okay. At the time that you



1 DONZIGER

2 were discussing meeting with Elliott and  
3 actually meeting with Elliott, you  
4 understood that the documents relating to  
5 Elliott were relevant to the Court's March  
6 injunction, March 2014?

7 A. No. I was working off the  
8 clarification order. So to me there was no  
9 issue then or now.

10 Q. And there was no need to  
11 maintain documents?

12 A. It didn't even occur to me one  
13 way or the other, and I did maintain  
14 documents.

15 Q. In terms of the NDA and the  
16 e-mail string about destroying the  
17 documents, was there anybody from whom you  
18 were attempting to keep them confidential  
19 other than Chevron?

20 A. Not that I can recall.

21 Q. You understand the Court's  
22 injunction of assigning your retainer  
23 interest to Chevron, yes, that the  
24 injunction orders you to do that?

25 A. My Amazonia shares.

1 DONZIGER

2 Q. No, your interest in the  
3 judgment.

4 A. Okay, whatever. What are you  
5 trying to do here? Can you ask me a  
6 question? I don't know if we agree on  
7 this.

8 Q. Paragraph 1 of the injunction  
9 says "The Court hereby imposes a  
10 constructive trust for the benefit of  
11 Chevron, all property, whether personal or  
12 real, tangible, traceable to the judgment,"  
13 blah blah blah, "including, without  
14 limitation, all rights to any contingent  
15 fee under the retainer agreement and all  
16 stock in Amazonia. Donziger shall transfer  
17 and forthwith assign to Chevron all such  
18 property he has now or hereafter may  
19 obtain." That's what I'm talking about.

20 A. So why are you asking me that  
21 question in this deposition? I know you  
22 tried to get me to do an assignment  
23 separate from the Amazonia. If that's what  
24 you want me to do, then take action with  
25 the Court. I mean, I don't -- I don't know

1 DONZIGER

2 why you are asking in this deposition.

3 Q. Well, I'm going to provide you  
4 with the transfer while we're on the record  
5 which I have marked as Exhibit 5323.

6 (Plaintiff's Exhibit 5323  
7 marked for identification.)

8 A. Okay, I will take it. Do you  
9 want me to take this or this is an exhibit?

10 Q. This is an exhibit. I will  
11 give you another copy. If you want to  
12 execute the exhibit copy, that's fine.

13 I take it you are not willing  
14 to execute this document today?

15 A. This is a whole other thing I  
16 need to look at, consider, and think about,  
17 so no, I'm not willing to execute this  
18 document today, and if you are asking me to  
19 execute it, I need some time and I will get  
20 back to you.

21 Q. Okay. In terms of cleaning up  
22 a little bit where we are on these document  
23 issues, so any documents that you've  
24 withheld as privileged either from  
25 Mr. Rizack's production or your own, you

DONZIGER

said you had your own group of documents that were privileged, are you willing to produce those pursuant to the 502 or do you intent to provide a log, and, if so, by when?

A. Well, I don't know the answer to that question. I mean, the Rizack thing is virtually nothing. I think he can provide a log in a few minutes.

I think with regard to my documents, I could provide a log, but I think a lot of them are being withheld not on privilege grounds but on First Amendment grounds.

But, you know, I described what I'm withholding to some degree today and I'm ready to produce more if I need to. I don't want to because, again, I think it intrudes on my constitutional right. So I will produce more documents if I have to.

By the way, a lot of what Sullivan produced, from what I could tell from my brief review, I think is duplicative of some of my stuff.

1 DONZIGER

2 Q. That you were withholding?

3 A. Yeah. And just to be clear, I  
4 don't believe Sullivan was right in  
5 producing that, given the pendency of my  
6 motion, so we'll see how it plays out. We  
7 might move at some point to claw that back.  
8 I don't know. But I just want to be clear  
9 that we do not consider that production to  
10 be legally resolved at this point, for lack  
11 of a better term.

12 Q. Okay. The TD Bank accounts  
13 that you've identified, those are  
14 completely within your control?

15 A. Yes.

16 Q. Nobody else is a signatory or  
17 moves money around in those or anything  
18 else?

19 A. That's correct.

20 Q. And the money that Ms. Sullivan  
21 managed in the CWP account has gone to a  
22 different account, she closed that account  
23 and sent that money somewhere but not to  
24 you?

25 A. That's correct.

1 DONZIGER

2 Q. Do you control that money? Do  
3 you direct whoever has the account now?

4 A. So I'm not going to get into  
5 that because that deals with our  
6 operational issues. The amount of money  
7 that was in the account she managed has  
8 been mostly spent. I mean, we basically  
9 have been unable to raise money since  
10 Chevron subpoenaed her. So, you know,  
11 there is just virtually nothing left.

12 Q. Other than your TD accounts and  
13 the CWP account and the new account that  
14 used to be the CWP account, any other  
15 accounts that you direct, that you can  
16 direct people to pay money out of or --

17 A. I'm going to provide a  
18 different reason for an objection. I  
19 believe that was asked and answered, wasn't  
20 it?

21 Q. Okay. Can you remind me?

22 A. Well, look at the transcript.  
23 I mean, didn't I tell you no already?

24 Q. I believe you said no, you had  
25 no foreign accounts. I'm not sure if I

1 DONZIGER

2 asked you if there are any other accounts  
3 that you had the authority to control.

4 A. So let me answer the question.

5 Q. Okay.

6 A. No.

7 Q. Thank you.

8 The FDA retainer, you are going  
9 to produce that?

10 A. Yeah.

11 Q. The draft agreement with  
12 Ms. Sullivan, would you produce that?

13 A. I don't know the answer to  
14 that. I suspect I think I would consider  
15 that not appropriate to produce, but I'll  
16 think about it and get back to you.

17 Q. And are you going to research  
18 for Elliott-related documents or --

19 A. I will.

20 Q. And you will let us know  
21 tomorrow?

22 A. Look, I know we are coming up  
23 to a hearing. I will search as soon as I  
24 get back today or tomorrow. You know, my  
25 experience with Katie Sullivan is she is

1 DONZIGER

2 very thorough and I would be shocked if I  
3 have anything other than what you already  
4 got from her. But I will try to see if I  
5 have those documents. Obviously they are  
6 probably in my e-mail somewhere.

7 Q. So you will see if you have  
8 something specifically that she is not on?

9 A. Yeah, but I don't know if -- I  
10 don't think there is a single e-mail, as I  
11 sit here today, that I recall, that I'm on  
12 with Elliott that she's not on. She  
13 managed that whole relationship.

14 Q. No, I mean discussing Elliott.  
15 Elliott doesn't need to be on the e-mail.

16 A. You mean between Katie and  
17 myself?

18 Q. Between Katie and yourself,  
19 between you and someone else. It just has  
20 to relate to the Elliott meeting.

21 A. I will do another search.

22 Do you have anything else with  
23 regard to documents? I mean, I have a  
24 list. What I will do is by tomorrow  
25 morning, I will send you a list of what is



1 DONZIGER

2 pending based on this deposition today,  
3 okay? And I will get you the stuff as soon  
4 as I can.

5 Q. But in all events, before  
6 Thursday.

7 A. Well, I don't know. The  
8 Elliott stuff I will prioritize because I  
9 think that's the main thing going on  
10 Thursday. So I will prioritize the Elliott  
11 stuff. I don't know if I will get all the  
12 stuff. For example, all the investments,  
13 you know, that's going to take a little bit  
14 of time.

15 Q. If you decide to withhold  
16 anything related to Elliott and then  
17 including the draft Sullivan agreement --

18 A. Well, that was between -- that  
19 wasn't -- that didn't have anything to do  
20 with Elliott.

21 Q. I'm putting it in two  
22 categories here.

23 A. Yeah.

24 Q. Could you bring those to court  
25 on Thursday?

1 DONZIGER

2 A. I will do my best.

3 Q. So if Judge Kaplan addresses  
4 the issue, you will have it there.

5 A. I will do my best to get what I  
6 can. Look, I will do my best to get it to  
7 you before Thursday. If it ends up that I  
8 have to bring it in and I think I should  
9 withhold it, I will do my best to bring it  
10 and he can decide.

11 Are we good?

12 Q. I think so. Give me one  
13 second.

14 And to the extent Ms. Sullivan  
15 produced more e-mails than you, that would  
16 be because --

17 A. She is better organized than I  
18 am. I mean, she might have -- I don't  
19 know. I think we were -- she might have  
20 had separate communication with them that I  
21 was not copied on. I don't know. You  
22 know, because she set the whole meeting up.

23 Q. Right.

24 A. So, I mean, I think she was in  
25 touch with Jonathan Bush and others and

1 DONZIGER

2 stuff that I was not involved in.

3 Q. I did forget something else.

4 You were so hopeful. You were so hopeful.

5 Do you have any direct contact  
6 with Jonathan Bush?

7 A. No.

8 Q. Did you have any direct contact  
9 with anybody else at athenahealth?

10 A. No.

11 Q. Not documents, not chats,  
12 nothing?

13 A. Nothing.

14 Q. Did they have any involvement  
15 in the Ecuador matter separate and apart  
16 from this Elliott introduction?

17 A. No.

18 Q. Mr. Donziger, subject to  
19 recalling you to answer the questions that  
20 we disagree about in terms of scope or  
21 privilege or whatever, the First Amendment  
22 objection -- do you want to explain that  
23 further, or no, you are done with that?  
24 I'm asking you that in seriousness because  
25 I don't understand it.

1 DONZIGER

2 A. What was the issue where you  
3 felt like raising a First Amendment  
4 objection was inappropriate?

5 Q. Just financial documents.

6 A. My personal financial  
7 documents?

8 Q. Right. They are not disposing  
9 of you.

10 A. And if I remember correctly, my  
11 answer was that it would be revelatory of  
12 certain internal operational strategies.  
13 So I will give that another think and I  
14 will add that to the list.

15 One other thing on my end,  
16 which is Ms. Sullivan's deposition, can I  
17 get the name of the court reporter?

18 MS. CHAMPION: I have already  
19 sent it to you, Mr. Donziger.

20 THE WITNESS: Thank you, I  
21 appreciate it.

22 A. Is there anything else?

23 Q. There haven't been any other  
24 depositions, is that what you are asking?

25 A. Have there been other

1 DONZIGER

2 depositions?

3 Q. No, sir.

4 A. Is there a deposition scheduled  
5 of Mr. Rizack?

6 Q. No. He has not provided us  
7 dates despite repeated requests.

8 A. You are not going to try to  
9 depose him before the hearing?

10 Q. I don't think there is -- we  
11 are going to have to get an order. You are  
12 not involved in his refusing to appear for  
13 a deposition I take it?

14 A. No, I am not. I'm not his  
15 attorney. All I did was tell him that  
16 there were a couple of documents that I  
17 felt were privileged or subject to the  
18 motion for a protective order.

19 Q. And you would have no objection  
20 to him appearing before the hearing?

21 A. Appearing for a deposition?

22 Q. Correct.

23 A. I mean, that's between you and  
24 him. Thank you very much.

25 Q. Thank you, Mr. Donziger.

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DONZIGER

THE VIDEOGRAPHER: Nothing  
else, Counselor?

MS. NEUMAN: No, we're off the  
record.

THE VIDEOGRAPHER: The time is  
3:20. We are going off the record. This  
is the end of media file number five and  
that concludes this deposition.

[TIME NOTED: 3:20 p.m.]

-----  
STEVEN DONZIGER

-----  
Subscribed and sworn to  
before me this -----  
day of -----, 2018.

-----  
Notary Public

## I N D E X

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CERTIFICATION

I, TODD DeSIMONE, a Notary Public for  
and within the State of New York, do hereby  
certify:

That the witness whose testimony as  
herein set forth, was duly sworn by me; and  
that the within transcript is a true record  
of the testimony given by said witness.

I further certify that I am not related  
to any of the parties to this action by  
blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 26th day of June, 2018.



-----  
TODD DESIMONE

\* \* \*

**ERRATA SHEET**  
**VERITEXT/NEW YORK REPORTING, LLC**

**CASE NAME: CHEVRON v. DONZIGER**  
**DATE OF DEPOSITION: 6/25/18**  
**WITNESS' NAME: STEVEN DONZIGER**

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**STEVEN DONZIGER**  
**SUBSCRIBED AND SWORN TO**  
**BEFORE ME THIS \_\_\_\_\_ DAY**  
**OF \_\_\_\_\_, 2018.**

-----  
**NOTARY PUBLIC**  
**MY COMMISSION EXPIRES \_\_\_\_\_**

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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# **EXHIBIT 3**

I6SJCHE1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 Civ. 691 LAK JCF

6 STEVEN DONZIGER, et al.,

7 Defendants.

8 -----x

9 June 28, 2018  
10 9:30 a.m.

11  
12 Before:

13 HON. LEWIS A. KAPLAN,

14 District Judge

15 APPEARANCES

16 GIBSON, DUNN & CRUTCHER, LLP

17 Attorneys for plaintiff

18 BY: RANDY M. MASTRO, Esq.

19 HERBERT J. STERN, Esq.

20 JOEL SILVERSTEIN, Esq.

21 ANDREA NEUMAN, Esq.

22 ANNE MARIE CHAMPION, Esq.

23 ALEJANDRO HERRERA, Esq.

24 JEFFERSON BELL, Esq.

25 STEVEN ROBERT DONZIGER,

Appearing pro se

Also Present:

ANDREW R. ROMERO-DELMASTRO, Supv. Counsel Chevron

I6SJCHE1

1 (In open court)

2 (Case called)

3 THE COURT: Let's proceed. Mr. Mastro, your first  
4 witness.

5 MR. MASTRO: Thank your Honor. My co-counsel, Herb  
6 Stern, is putting on the first witness.

7 THE COURT: Mr. Stern.

8 MR. STERN: Yes. We call Lee Grinberg, please.

9 May it please your Honor, we have our exhibits, and I  
10 have provided an extra 3 A to you because I'm going to be going  
11 backed and forth and it will be easier for you if you have an  
12 extra copy.

13 THE COURT: Okay. Thank you.

14 MR. STERN: Mr. Donziger and I have conferred, and he  
15 has no objection to the admissibility of these exhibits.

16 Am I correct?

17 MR. DONZIGER: That's correct.

18 THE COURT: So the exhibits are --

19 MR. STERN: We offer them.

20 THE COURT: GR 1 through 7, including in some cases  
21 lettered subparts. Am I right?

22 MR. STERN: Thank you.

23 THE COURT: They're received.

24 (Plaintiffs' Exhibits GR 1 through 7 received in  
25 evidence)

I6SJCHE1

LEE GRINBERG,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STERN:

Q. What is your name, sir?

A. Lee Grinberg.

Q. You're going to have to use help there.

Where are you employed, Mr. Grinberg?

A. Elliott Management Corporation.

Q. In what capacity are you employed?

A. My title is portfolio manager.

Q. Before getting into that, I'd like to introduce you a little better to the court. Would you give us an idea of your educational background. Are you a college graduate?

A. Yes.

Q. Where did you go to school?

A. College, Dartmouth College.

Q. Thereafter, did you take some professional training?

A. Yes.

Q. Where was that?

A. Morgan Stanley and a company called iExchange.

Q. Let me sharpen that a little bit. Did you go to some schools after college?

A. Yes, University of Pennsylvania.



I6SJCHE1

1 Q. At Pennsylvania, University of Pennsylvania, what degrees  
2 did you take?

3 A. An MBA and a JD.

4 Q. So you are a lawyer. Is that correct?

5 A. Correct.

6 Q. Now, did there come a time when you went to work for  
7 Elliott Management?

8 A. Yes.

9 Q. How long ago was that?

10 A. 2007.

11 Q. So that is about 11 years?

12 A. Correct.

13 Q. What do you do there?

14 A. I am a portfolio manager. We invest capital for our  
15 limited partners and general partner.

16 Q. Now, there did come a time, did there not, when you had a  
17 meeting with Mr. Donziger and with Ms. Katie Sullivan. Is that  
18 right?

19 A. Yes.

20 Q. I am going to ask you some questions about the events that  
21 led up to that meeting. Do you understand?

22 A. Yes.

23 Q. First of all, I would like you to turn, if you will, to  
24 what has been marked Exhibit 4 which is now in evidence.

25 A. I don't have any copies of any documents.

I6SJCHE1

1 Q. Forgive me. I thought I had given --

2 THE COURT: Maybe you handed me his copy.

3 MR. STERN: May I approach him, your Honor?

4 THE COURT: Yes.

5 (Pause)

6 BY MR. STERN:

7 Q. Would you kindly turn to Exhibit 4.

8 A. Yes.

9 Q. All right. Now, you are not copied on this exhibit. Am I  
10 correct?

11 A. Correct.

12 Q. And the date of that exhibit, would you kindly read it into  
13 the record.

14 THE COURT: Well, it is an e-mail chain.

15 THE WITNESS: The e-mail chain is October 16th.

16 BY MR. STERN:

17 Q. You'll note that according to Exhibit 4 in evidence, there  
18 is a discussion between Mr. Donziger, on the one hand, and  
19 Katie Sullivan, on the other, about attempting to get a meeting  
20 with Elliott Management. Do you see that?

21 A. Yes.

22 Q. Am I correct that there is a reference to a man by the name  
23 of Paul Singer, do you see that, by Mr. Donziger, saying we  
24 need to get to Paul Singer?

25 A. Yes.

I6SJCHE1

1 Q. Who heads Elliott Management?

2 A. Yes, I see that.

3 Q. Do you know Paul Singer?

4 A. Yes, .

5 Q. Does he, in fact, head of Elliott Management?

6 A. Yes.

7 Q. Do you see a reference in Ms. Sullivan's e-mail to Led  
8 Zeppelin right on the top of the page?

9 A. I was just looking through all of the e-mails.

10 Q. Take your time. I don't mean to rush you.

11 A. In the latest e-mail, 602, there is a reference to Led  
12 Zeppelin.

13 Q. Is Paul Singer, in fact, a fan of Led Zeppelin?

14 A. I believe so.

15 Q. Do you know that of your own knowledge, right?

16 A. Yeah, I believe so, yes.

17 Q. Now, you note in there that there is a reference to the  
18 suggestion that in the approach to Elliott Management, it might  
19 be attractive for them to make an investment, and at the same  
20 time, short the Chevron stock. Do you see that?

21 A. Yes.

22 Q. We'll come back to that when we turn to November the 6th,  
23 but I'd like now to direct your attention to Exhibit 6 in  
24 evidence. That is an e-mail three days later, am I correct,  
25 October 19th?

I6SJCHE1

1 THE COURT: It doesn't appear to be.

2 THE WITNESS: Yeah, there is no --

3 BY MR. STERN:

4 Q. Thursday, October 19th, 2017?

5 MR. STERN: Do I have the wrong exhibit number?

6 Pardon me. I have my reading glasses on and I didn't read  
7 right. Exhibit 5, your Honor, you're quite correct.

8 THE WITNESS: I see that exhibit now.

9 BY MR. STERN:

10 Q. And again, which we'll come to, there is a reference again  
11 to the shorting of Chevron stock. Do you see that?

12 A. Yes.

13 Q. And finally, there is a reference to the NDA. Indeed, it  
14 is in the heading, "Here's the NDA." Am I correct?

15 A. Yes, that is the title of the e-mail or subject of the  
16 e-mail.

17 Q. All right. There did come a time when you were, in fact,  
18 presented by Ms. Sullivan with an NDA. Am I right?

19 A. Yes.

20 Q. So, now let us go back to the earlier exhibits.

21 There came a time, did there not, when a meeting was,  
22 in fact, arranged between representatives of Elliott and Ms.  
23 Katie Sullivan and Mr. Donziger. Am I right?

24 A. Yes.

25 Q. Will you tell the court how that meeting came about.

I6SJCHE1

1 A. Katie Sullivan reached out to Jesse Cohen at Elliott, who  
2 then reached out to me. Katie introduced the idea of a meeting  
3 with her to discuss, I don't remember the exact term, but it is  
4 the judgment that had been obtained in Ecuadorian courts  
5 related to the Chevron dispute.

6 Q. Did they use an intermediary to arrange for the meeting?

7 A. She used I believe a relationship that she had with  
8 Jonathan Bush, who was then CEO of Athena Health, who knew  
9 Jesse.

10 Q. Since you mentioned Mr. Jesse Cohen, would you enlighten  
11 us, tell us who he is in terms of Elliott Management.

12 A. I believe his title is senior portfolio manager.

13 Q. Was it he who selected you to attend the meeting?

14 A. Yes.

15 Q. Do you know why he selected you to attend the meeting?

16 A. I believe because I had been involved in disputes that he  
17 thought -- not disputes, but investments that had some touch  
18 points with what Katie was suggesting the discussion would be  
19 about.

20 Q. What sort of investments were those?

21 A. We had an investment in Argentine bonds that involved a  
22 long and complicated workout.

23 Q. Now, did you understand even before the actual meeting what  
24 the purpose of the meeting was?

25 A. Generally speaking, yes.

I6SJCHE1

1 Q. What was your general understanding at that time?

2 A. It is that in some fashion the plaintiffs would be seeking  
3 some assistance in collection.

4 Q. By the "plaintiffs," I gather, you're referring to the  
5 plaintiffs in the case in Ecuador, correct?

6 A. Correct.

7 Q. And that they had a judgment in Ecuador that they sought to  
8 collect on?

9 A. Correct.

10 Q. Did you understand that they would be seeking financial  
11 investment from your firm?

12 A. I assumed that they would want some form of assistance and  
13 that might come in the form of capital.

14 Q. Let me assist you.

15 Did there come a time, and take a look at exhibit -- I  
16 will get it right this time -- Exhibit 2 --

17 A. Okay.

18 Q. -- which is in evidence. Did you receive that from Katie  
19 Sullivan?

20 A. Yes.

21 Q. With that, was there an attachment? Let me help you. In  
22 particular, an NDA?

23 A. There may have been. I don't see a reference to it in the  
24 email.

25 Q. If you turn the page, it is still part of the same exhibit.

I6SJCHE1

1 Do you have the NDA? No?

2 A. No. This is an email chain from November 3rd, and I don't  
3 recall there being an NDA sent to us.

4 THE COURT: Are you looking at Exhibit 2?

5 MR. STERN: I don't think you are.

6 THE WITNESS: Sorry.

7 MR. STERN: I did the same thing.

8 THE WITNESS: I am sorry. I apologize. I was looking  
9 at Exhibit 1.

10 MR. STERN: I understand. Thank you, your Honor.

11 BY MR. STERN:

12 Q. Let's go back to the email. Do you see --

13 A. Yes, I see that now, yes.

14 Q. She tells you that you're going get the NDA along with this  
15 email and she wants to sign it so Mr. Donziger can speak  
16 freely, right? Those are the very words she uses, right?

17 A. Yes.

18 Q. There is an NDA attached, is there not?

19 A. Correct.

20 Q. The NDA tells you what the purpose of the meeting is,  
21 correct? Look at the whereas clause.

22 A. Correct.

23 Q. "Whereas, the above-named parties wish to engage in  
24 discussions concerning a possible financing of a judgment  
25 collection." Am I correct?

I6SJCHE1

1 A. Correct.

2 Q. So did you know going into the meeting what the subject was  
3 and what they were looking for from Elliott not in detail, but  
4 in general, I mean?

5 A. No. I hadn't read the NDA before the meeting because we  
6 were not going to sign an NDA so close in advance to a meeting.

7 We have internal procedures. We have to run these  
8 things by counsel, internal counsel and so forth, so it was  
9 going to be a non-starter for us to be able to sign something  
10 like that. I actually hadn't read any part of this  
11 nondisclosure agreement prior to the meeting later that day.

12 Q. I think you've already testified you understood they were  
13 going to be looking for a capital investment. Is that correct?

14 A. That was one of the possibilities, yes, that they would be  
15 seeking.

16 Q. Okay. Now, in fact, did such a meeting take place?

17 A. Yes.

18 Q. When did it take place?

19 A. On November 6th.

20 Q. Who was present at the meeting?

21 A. Myself, Jesse Cohen, Mr. Donziger and Katie Sullivan.

22 Q. Do you see Mr. Donziger in the court?

23 A. Yes.

24 Q. There is no question about that, right?

25 A. Correct.



I6SJCHE1

1 Q. All right. Now, during the meeting did you take notes?

2 A. Yes.

3 Q. If you recall, did you see Katie Sullivan taking notes?

4 A. Yes.

5 Q. So you took notes and Katie Sullivan took notes, and I'm  
6 going to be asking you some questions about what occurred at  
7 the meeting. Your notes have been marked, if I get this right,  
8 Exhibit 3, and Katie Sullivan's notes have been marked Exhibit  
9 3 A.

10 MR. STERN: Your Honor, for your convenience, I have  
11 kind of given you an extra copy of Katie Sullivan's notes so as  
12 we go back-and-forth, you won't have to flip as we will.

13 THE COURT: Thank you.

14 BY MR. STERN:

15 Q. Now, I see in your notes pretty close to the beginning --  
16 first of all, you have designated it as the Donziger  
17 conversation. Am I correct?

18 A. Correct.

19 Q. That is what it was, right?

20 A. (No response)

21 Q. Now, there is a reference to 33 million third party funders  
22 individuals. Do you see that?

23 A. Yes.

24 Q. What is that in reference to?

25 A. Capital that has been raised by third parties to facilitate

I6SJCHE1

1 enforcement of the judgment.

2 Q. Who told you that?

3 A. Mr. Donziger.

4 Q. Now, you'll note further down on the page -- indeed, at the  
5 very end of the page -- there is a further reference to that  
6 subject. Am I correct?

7 A. Correct.

8 Q. Now, the fact that there is that separation would indicate,  
9 would it not, that that subject was reverted to later in the  
10 conversation in the initial presentation. Am you I right?

11 A. Correct.

12 Q. These are your notes, right?

13 A. Correct.

14 Q. Well, we'll come to that.

15 Now, during the course of the meeting, was there any  
16 discussion about the fact that it might be difficult to enforce  
17 or collect on the judgment because of outstanding court  
18 process?

19 A. Yes.

20 Q. Now, to the extent it may be helpful to you, I would like  
21 you to direct your attention to Exhibit 3 A in evidence, which  
22 is Ms. Sullivan's notes, and to two specific entries. On the  
23 first page is a notation, "injunction in the U.S." Do you see  
24 that?

25 A. Yes.

I6SJCHE1

1 Q. And then on the second page, and I don't know how this is  
2 set up, it may be front and back, there is a notation Rule 65.  
3 Would you read that notation.

4 A. "Rule 65 participating, violation in some court order."

5 Q. Now, during the course of that meeting, did you come to  
6 understand that there had been some difficulty in connection  
7 with the collection of the judgment in respect to its legality  
8 in terms of United States law?

9 A. Correct.

10 THE COURT: What was said on that subject?

11 THE WITNESS: Just --

12 THE COURT: And by whom?

13 THE WITNESS: -- there would be an inability to  
14 collect on any Chevron assets in the United States.

15 BY MR. STERN:

16 Q. Now, in that regard I would like to revert back to Exhibit  
17 3, which are your notes, and in particular, although it is cut  
18 off, but I think still legible, in the lower-left-hand corner,  
19 do you see the entry there, and I wonder if you would be good  
20 enough, since it is your handwriting, to read it into the  
21 record, although it is already in the record because it is in  
22 evidence.

23 A. It says, "Can money come into U.S."

24 Q. Is there a relationship between what you just testified to  
25 about the difficulty or the legality of the enforcement and

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1 your entry there about the money coming into the United States?

2 A. I don't recall exactly what relation that had to the  
3 discussion.

4 Q. Let's put it this way. You're quite familiar with the  
5 exchange of money between countries and entities in different  
6 countries. Is that correct?

7 A. Not terribly familiar, but --

8 Q. You have enforced judgments in various places in the world,  
9 have you not?

10 A. We tried, yes.

11 Q. Sometimes with success, true?

12 A. (No response)

13 Q. In other words, do you know of any difficulty other than  
14 the fact that there is a Rule 65 injunction in terms of money  
15 coming into the country?

16 A. Money can get tied up in foreign jurisdictions for all  
17 kinds of reasons. I don't know that an injunction may be one  
18 reason, but there is often --

19 Q. There is no question in your mind that the subject of the  
20 injunction, Rule 65 and legal difficulties attendant thereto,  
21 was part of the conversation. Am I correct?

22 A. There was no -- I don't recall a discussion specifically  
23 about the injunction. There was discussion about an inability  
24 to use the Ecuadorian judgment to be I guess domesticated in  
25 some form or some way in enforcing in the United States, but I

I6SJCHE1

1 don't recall the term, "injunction" coming up.

2 Q. Well, that term is now in evidence. Her notes are in  
3 evidence. You don't say that it didn't come up, do you?

4 MR. DONZIGER: Objection. Your Honor --

5 THE COURT: Overruled.

6 MR. DONZIGER: Can I state the basis?

7 THE COURT: State the basis.

8 MR. DONZIGER: I think Judge Stern is asking the  
9 witness to interpret notes made by somebody else, and I think  
10 it might be the better way to do it would be maybe ask directly  
11 the witness what he remembers about the meeting since it is  
12 complicated, looking at Katie Sullivan's notes and asking him  
13 to interpret it.

14 THE COURT: You can do it both ways. Answer the  
15 question. Mr. Stern, maybe you should ask him what was said.

16 THE WITNESS: Would you mind repeating.

17 BY MR. STERN:

18 Q. I think my question was are you in a position to deny that  
19 there was a discussion of an injunction?

20 A. I don't recall the word, "injunction" coming up in the  
21 context of the discussion, but it was clear that there was an  
22 inability to collect against Chevron assets locally,  
23 domestically in the U.S. That was clear from the discussion.

24 Q. All right. Now, did there come a time during the  
25 discussion that there was the subject of risk and reward came

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up?

A. I don't remember using those terms specifically.

THE COURT: Do you remember anyone else using either of those terms?

THE WITNESS: I don't.

BY MR. STERN:

Q. Well, let's turn for a moment to Exhibit 3 A do you see the entry GC at Chevron owns the entire strategy? Do you see that?

A. Yes.

Q. Let us now for the moment turn to your notes, which are Exhibit 3. Do you see the entry which reads, as best I can read it, "turnover in leadership. John Watson start 2010."

Do you see that?

A. Yes.

Q. Do you know who John Watson is or was?

A. I believe he was the CEO, senior management, CEO of --

Q. Of who?

A. I am sorry. Of Chevron.

Q. Yes. Would you favor us by reading the next entry underneath.

A. It says, "Leaving February 1st of 2018," and then a separate bullet point that says, "mismanaged this case."

Q. Was that related to the entry on Ms. Sullivan's notes, "GC at Chevron owns the entire strategy," and so forth.

Do you see that? Do any of those entries stimulate a

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1 recollection on your part about what was being said between you  
2 and Mr. Donziger and Ms. Sullivan on that subject?

3 A. I do not recall the relationship between Watson leaving and  
4 the GC at Chevron, but I just remember the general context of  
5 the discussion being about there being a potential incentive of  
6 some way, in some way for Chevron to get past this and to  
7 settle the dispute.

8 Q. Basically if I understand what you're saying, do you  
9 understand that there was a change in management and that now  
10 the general counsel owned the ability to settle the case?

11 A. Yeah. I don't recall it being necessarily now exclusively  
12 in the hands of the general counsel, but I do remember the,  
13 like I said, the context being that the CEO who had been in  
14 place until -- was still in place at that point, but was  
15 leaving, you know, the perception Mr. Donziger was given people  
16 believed he mismanaged this case and there would be an  
17 incentive for the company to settle.

18 I don't recall that the GC being the one who now owns  
19 this, and if a CEO at one point owned it, I assume the next CEO  
20 would quote-unquote own it as well.

21 Q. I am confining my questions to what was said. The topics I  
22 am referring to are the topics that are in your notes and her  
23 notes. I will ask you directly.

24 Did you come to understand that there was a window of  
25 opportunity arising because of the change of management which

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1 might make it easier to settle the case?

2 A. I didn't necessarily see it as a window of opportunity. It  
3 was just expressed to me that because former management,  
4 because management was turning over, that there may be an  
5 incentive for the company to settle. That was just kind of  
6 expressed to me. It wasn't my impression. I don't know  
7 little, if anything, about Chevron's leadership.

8 THE COURT: Mr. Grinberg, maybe we can move this  
9 along. You understood going in that the purpose of the meeting  
10 was because Mr. Donziger and Ms. Sullivan wanted Elliott to put  
11 money into or otherwise assist them in their efforts. Is that  
12 true?

13 THE WITNESS: Correct.

14 THE COURT: Now, did Mr. Donziger explain to you at  
15 that meeting why he thought it was to the advantage of Elliott  
16 to do so?

17 THE WITNESS: Because there would ultimately be  
18 recoveries based on enforcing the Ecuadorian judgment that  
19 would yield effectively profits on whatever assistance was  
20 provided.

21 THE COURT: Did he say anything to you about why he  
22 thought that might be so?

23 THE WITNESS: Well, because there is pending  
24 litigation in jurisdictions outside the U.S. and there may be  
25 an incentive because of this leadership change for the company



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1 to settle.

2 THE COURT: What did he say about those litigations,  
3 if anything?

4 THE WITNESS: Just mentioned there was litigation in  
5 Canada.

6 THE COURT: Was anything said by Mr. Donziger to you  
7 on what might be in this for Elliott if you invested or  
8 otherwise assisted?

9 THE WITNESS: It would be some financial return based  
10 on the proceeds of whatever recoveries they could get by  
11 enforcing the judgment against Chevron.

12 THE COURT: Go ahead, Mr. Stern.

13 BY MR. STERN:

14 Q. As a matter of fact, there was a discussion of the amount  
15 of the judgment; am I correct? Take a look at your notes,  
16 Exhibit 3.

17 A. Yes.

18 Q. What did he tell you the amount of the judgment was?

19 A. It was about nine and a half billion.

20 Q. In subsequent communications, which I may come to or not  
21 that is in evidence, Katie Sullivan referred, did she not, to  
22 an interest factor in that, too, didn't she?

23 A. I don't recall her referring to an interest factor, but I  
24 assumed there is some.

25 Q. Okay. Now, in regard to the request for money from

I6SJCHE1

1 Elliott, was a presentation made to you about the present  
2 ownership interest in the judgment?

3 A. Yes.

4 Q. So there are two entries, one on your notes and one --

5 THE COURT: Excuse me, Mr. Stern. What was said on  
6 that subject and by whom?

7 THE WITNESS: What was said was there was just a kind  
8 of a brief summary of the amount of points, as it were, in  
9 terms of who or what portion of recoveries different parties  
10 would receive to the extent there was successful enforcement  
11 proceedings.

12 For instance, in my notes it says Mr. Donziger  
13 personally had 6.3 percent out of 100 percent and that there  
14 had already been allocated 15 to 20 percent amongst 15 people.

15 BY MR. STERN:

16 Q. Just for the record, unless you don't want me to do it, do  
17 you notice on Page 2 of Ms. Sullivan's notes the same notations  
18 appear. Am I correct?

19 A. Yes, correct.

20 Q. All right. Now, let me put it to you this way.

21 Did you understand that Mr. Donziger was attempting to  
22 monetize the judgment by obtaining money from Elliott?

23 MR. DONZIGER: Objection; calls for a legal  
24 conclusion.

25 THE COURT: Overruled.

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1           THE WITNESS: I didn't take it -- when you say  
2 "monetize the judgment," to me that means that he would use  
3 those proceeds and actually give them to judgment-holders, but  
4 my understanding would be that if there were any proceeds, it  
5 would be used in an enforcement, not to monetize or to pay  
6 existing plaintiffs.

7 BY MR. STERN:

8 Q. Let me be very clear about the word monetize.

9           Do you understand he was asking you to purchase part  
10 of the judgment?

11 A. Correct.

12 Q. I am correct, am I not?

13 A. Correct.

14 Q. What he was going to do with the money is not what I am  
15 asking you. What I am asking you is, he is selling a part, an  
16 interest in the judgment to you, correct, or trying to?

17 A. Trying to, correct.

18 Q. Ultimately you and the management of Elliott concluded that  
19 you were not interested. Am I right?

20 A. Correct.

21 Q. I am just going to let the following exhibits speak for  
22 themselves because there is a little point, you advised them in  
23 a final email that there was no interest in pursuing the  
24 conversation. Am I right?

25 A. Correct.

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Grinberg - cros

1 MR. STERN: I pass the witness, your Honor.

2 THE COURT: All right. Mr. Donziger.

3 MR. DONZIGER: Your Honor, can I have five minutes to  
4 gather my thoughts and figure out if I am going to cross? I am  
5 not sure I am.

6 THE COURT: Five minutes.

7 (Recess)

8 THE COURT: Mr. Donziger.

9 MR. DONZIGER: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. DONZIGER:

12 Q. Good morning, Mr. Grinberg.

13 You prepared an affidavit in this case, correct?

14 A. Correct.

15 Q. Did you review that affidavit prior to testifying today?

16 A. Yesterday, I believe, yes.

17 Q. Is that affidavit, as you sit here today, accurate?

18 A. Definitely.

19 Q. Did you write that affidavit yourself, or did someone  
20 assist you?

21 A. I had some assistance. I don't recall -- I did have some  
22 assistance.

23 Q. From who?

24 A. I believe it was Judge Stern and his firm, whatever firm  
25 they're affiliated with, after interviewing me.

I6SJCHE1

Grinberg - cros

1 Q. How was it that you came in contact with Judge Stern or a  
2 representative of his firm such that you prepared an affidavit?

3 A. I don't recall exactly. I believe somebody reached out to  
4 somebody at our firm, asking if there was potential -- if there  
5 had been some meeting between yourself and representatives of  
6 Elliott.

7 Q. Do you know who that was?

8 A. I don't know who reached out to the firm. I don't recall.

9 Q. Now, it is not the normal practice of Elliott to provide  
10 affidavits about meetings it has with potential investment  
11 opportunities. Is that correct?

12 A. That's correct.

13 Q. Can you explain why in this case Elliott or whoever made --  
14 well, let me withdraw that question.

15 Why in this case did Elliott, as an institution,  
16 decide to provide an affidavit about a meeting?

17 MR. STERN: Objection, your Honor.

18 THE COURT: Overruled. If you know?

19 THE WITNESS: The only reason I recall is that  
20 otherwise we would be subpoenaed, so offering a declaration was  
21 basically the alternative.

22 BY MR. DONZIGER:

23 Q. Was that communicated to you by someone within Elliott or  
24 someone outside of Elliott?

25 A. I don't recall.

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Grinberg - cros

1 Q. Do you know how Judge Stern or someone in his law firm came  
2 to contact Elliott about getting an affidavit?

3 A. I do not.

4 Q. When you prepared the affidavit, was there first a draft or  
5 multiple drafts prior to finalizing the affidavit?

6 A. There were drafts, but my recollection is maybe one or two  
7 at best, not many.

8 Q. Who prepared the drafts? Do you remember at least one  
9 draft, correct?

10 A. Correct.

11 Q. Who prepared that draft?

12 A. It was Judge Stern's firm or -- that was my understanding.  
13 Whoever had interviewed me based on that interview prepared  
14 that for my review.

15 Q. Whoever that person is, they sent it to you for your  
16 review?

17 A. Correct.

18 Q. In that first draft, was it completely accurate or did you  
19 suggest changes?

20 A. I don't recall. My recollection is that it was generally  
21 accurate. There may have needed to be a couple of things  
22 changed, but that is my recollection.

23 (Continued on next page)

1 Q. Now, just turning to the substance of the meeting that  
2 Katie Sullivan and myself had with you and Jesse Cohen, you  
3 don't have any recollection of me offering to sell my  
4 particular interests as an investment opportunity for Elliott,  
5 do you?

6 A. No, you did not.

7 Q. Did you have any contact with any lawyers from the Gibson  
8 Dunn firm in the preparation of your affidavit?

9 A. No.

10 Q. Do you remember the exact or approximate date that Judge  
11 Stern's law firm or the representative from the law firm  
12 contacted you about the possibility of signing an affidavit?

13 A. It was probably a couple of weeks before the affidavit was  
14 finalized, about that time frame.

15 Q. So you sent an e-mail to Katie Sullivan, I believe, on  
16 January 19th indicating that Elliott would not be interested in  
17 the Ecuador case as an investment, correct?

18 A. Correct.

19 Q. Were you contacted by Judge Stern's representative prior to  
20 sending that e-mail or after, to the best of your recollection?

21 A. It was after.

22 Q. And you mentioned that you had been interviewed by someone  
23 from Judge Stern's firm. Was it Judge Stern himself or  
24 somebody else?

25 A. I believe it was Judge Stern, one of his colleagues.

1 Q. Where did that interview take place?

2 A. At Elliott Management.

3 Q. Do you remember the date of that interview?

4 A. I don't. It was probably within a couple of weeks of the  
5 completion of the declaration.

6 Q. As a general matter, Elliott -- it's not unusual for  
7 Elliott to be interested in third-party litigation financing  
8 opportunities, correct?

9 A. It wouldn't be, no. It would be something we would look  
10 into as a potential investment.

11 Q. And you, Elliott, has had successful workouts, for lack of  
12 a better term, of prior third-party litigation finance  
13 investments it's engaged in, correct?

14 A. I'm just thinking third-party finance litigation --

15 Q. Let me rephrase. It might be easier.

16 Elliott has had successful results in litigation  
17 investments Elliott itself has made in the past, correct?

18 A. Yes. Well, investments we have had have sometimes involved  
19 litigation, in terms of enforcing whatever our claims are, so,  
20 yes, in that context, correct.

21 Q. And the idea of a third party financing a litigation as an  
22 investment is, at least within Elliott Capital, considered a  
23 legitimate investment, correct?

24 A. Correct.

25 Q. And the reason -- well, the reason that Elliott took the



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Grinberg

1 meeting, if you know, with Katie Sullivan and myself was to at  
2 least consider whatever pitch we were to make about the third  
3 party -- excuse me -- about a litigation investment opportunity  
4 in the Ecuador case, correct?

5 A. Yes. I would say that, in many respects, it was a favor  
6 for the person who had contacted us through Kate, but to some  
7 extent it was to hear the story, you know, without much  
8 additional context.

9 THE COURT: We're wandering off the subject of this  
10 hearing, Mr. Donziger. Let's get back to it.

11 MR. DONZIGER: I will let the witness go. I have no  
12 further questions.

13 THE COURT: All right. I have one or two,  
14 Mr. Grinberg.

15 Was there any discussion in the meeting, at all, by  
16 anyone, about how an investment by Elliott, if it elected to  
17 make one, would have been structured?

18 THE WITNESS: No, only to the extent that, you know,  
19 there could be a percentage involved. But no structuring  
20 beyond that.

21 THE COURT: A percentage of what exactly?

22 THE WITNESS: Of whatever -- a percentage of the  
23 proceeds that would be generated by a successful enforcement  
24 against Chevron.

25 THE COURT: Or settlement.

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Grinberg

1 THE WITNESS: Or settlement, correct.

2 THE COURT: A percentage of what proceeds  
3 specifically? If that came up. The gross? The net?  
4 Somewhere in between?

5 THE WITNESS: Nothing. There was no discussion beyond  
6 the idea that -- just the concept there that there was capacity  
7 under, you know, the distribution that may be available to  
8 Elliott. That's it.

9 THE COURT: At that meeting, were any documents shown  
10 to you by Mr. Donziger or Ms. Sullivan?

11 THE WITNESS: No. There was -- well, there was a  
12 booklet, a marketing document, it seemed, about the case itself  
13 that featured, you know, local Ecuadorians who had been dealing  
14 with the fallout of whatever environmental problems had  
15 surfaced.

16 THE COURT: Was it given to you?

17 THE WITNESS: Yes.

18 THE COURT: Do you have it?

19 THE WITNESS: I do not. I believe we handed it over  
20 to Judge Stern.

21 THE COURT: Other than the e-mails that we've seen  
22 here this morning, were there any other writings that came to  
23 you from Mr. Donziger or Ms. Sullivan or any associates?

24 THE WITNESS: No.

25 THE COURT: Do counsel on either side wish to ask any

1 questions in light of my examination?

2 Judge Stern?

3 JUDGE STERN: Just one.

4 REDIRECT EXAMINATION

5 BY JUDGE STERN:

6 Q. In the subsequent e-mail, which is in evidence,  
7 Mr. Donziger offered to send you a brochure which he -- and I'm  
8 just paraphrasing -- characterized as a pamphlet or brochure  
9 that he had prepared for investors. Do you recall that?

10 A. I don't recall. I'd have to look back at the exhibits  
11 if --

12 JUDGE STERN: Yes. It's in evidence.

13 THE COURT: Judge Stern, if it's in the exhibit, it's  
14 in the exhibit.

15 JUDGE STERN: I agree, your Honor. I just thought you  
16 were interested, so I --

17 Q. And in fact you declined to receive it because you said you  
18 were not interested; am I correct? Do you remember that?

19 I think the Judge would like us to move on.

20 JUDGE STERN: I'll withdraw the question. It's in  
21 evidence. You're right, your Honor. Thank you.

22 THE COURT: Thank you.

23 Mr. Donziger, anything further?

24 MR. DONZIGER: No. I'm done.

25 THE COURT: All right. Mr. Grinberg, you're excused.

1 (Witness excused)

2 THE COURT: Next witness.

3 MR. MASTRO: Your Honor, plaintiff calls Mr. Donziger.

4 STEVEN DONZIGER,

5 the defendant herein,

6 having been duly sworn, testified as follows:

7 THE COURT: Mr. Donziger, since you're representing  
8 yourself, let's set this ground rule. If you have an objection  
9 to a question, you will say the word "objection" and nothing  
10 more. If I see any need to have an elaboration, I'll ask you  
11 for it. OK?

12 THE WITNESS: OK.

13 THE COURT: Sir?

14 THE WITNESS: Yes.

15 THE COURT: All right. Go ahead, Mr. Mastro.

16 MR. MASTRO: Thank you, your Honor.

17 Before we start, I just wanted to hand up to the  
18 witness and to the Court a binder of the exhibits we may offer  
19 during the examination, as well as a copy of Mr. Donziger's  
20 deposition of this past Monday and a copy of the transcript of  
21 the contempt hearing on May 8, 2018. I'm also going to leave  
22 in front of Mr. Donziger the Grinberg exhibits.

23 THE WITNESS: Your Honor, I'm sorry to interrupt. I  
24 have kind of a logistical question, could I ask you.

25 THE COURT: Go ahead.

1 THE WITNESS: So after Mr. Mastro finishes with his  
2 examination, and I want to -- I get to do what would be --

3 THE COURT: Redirect.

4 THE WITNESS: -- a redirect, what is the way I would  
5 do that?

6 THE COURT: Q and A?

7 THE WITNESS: Like I would ask the Q --

8 THE COURT: You would ask the Q. That gives him an  
9 opportunity to object if he is so minded. If there's no  
10 objection or I overrule it, he'll answer your question.

11 THE WITNESS: One other quick question. Do you mind  
12 if I keep a legal pad here with notes, because I need to -- as  
13 like the lawyer with a witness.

14 THE COURT: Sure.

15 THE WITNESS: I'm just going to go get it.

16 THE COURT: OK.

17 OK, Mr. Mastro, you may proceed.

18 MR. MASTRO: Thank you, your Honor.

19 DIRECT EXAMINATION

20 BY MR. MASTRO:

21 Q. Mr. Donziger, you just heard Mr. Greenberg's testimony --

22 THE COURT: Isn't the gentleman's name Grinberg, or  
23 did I get it wrong?

24 MR. MASTRO: "Grin." Thank you.

25 Q. Mr. Donziger, you just heard Mr. Grinberg's testimony of

1 what he recalls and understood happened at the November 6, 2017  
2 meeting that you and Ms. Sullivan had with him and one of his  
3 colleagues.

4 A. Yes.

5 Q. So is there anything about Mr. Grinberg's testimony about  
6 what he recalled and understood happened at that meeting with  
7 which you disagree? Yes or no.

8 A. Yes.

9 Q. Sir, was Mr. Grinberg's testimony accurate as to what he  
10 said you described as the opportunity for Elliott at that  
11 meeting?

12 A. I -- my testimony is that what he put in his affidavit and  
13 what he testified today with regard to those events was  
14 accurate, although not complete.

15 Q. Now, Mr. Donziger, I'd like to ask you a few follow-up  
16 questions. Am I correct that since March 2014, you have raised  
17 money to support the enforcement efforts of the Ecuadorian  
18 judgment by selling interests in the judgment?

19 A. I have helped my clients in Ecuador sell interests in the  
20 judgment to raise funds to pay litigation expenses since that  
21 day, yes.

22 Q. Thank you, sir. Am I also correct that, out of the funds  
23 you have raised by selling interests in the judgment, you have  
24 paid yourself since March 2014, correct?

25 A. That is correct.

1 Q. Am I correct, sir, that you have sold interests in the  
2 judgment, since March 2014, to multiple investors?

3 MR. DONZIGER: Objection.

4 Q. Yes or no.

5 THE COURT: Yes or no.

6 A. Well, there's a presumption in the question that's not  
7 accurate. Can I explain?

8 Q. No. I'll rephrase the question, sir.

9 In selling interests in the judgment, am I correct  
10 that you have sold interests in the judgment to multiple  
11 investors since March 2014?

12 A. First of all, I am not selling interests in the judgment.  
13 I am arranging for my clients to sell their interests in the  
14 judgment. But the rest of your question, have there been  
15 multiple investors, the answer is yes.

16 Q. So the record is clear, you have sold on behalf of your  
17 clients interests in the Ecuadorian judgment to multiple  
18 investors since March 2014, correct?

19 MR. DONZIGER: Objection.

20 THE COURT: I think that's been asked and answered.

21 Q. How many investors have you arranged to sell an interest in  
22 the judgment on behalf of your client or clients since March  
23 2014?

24 A. To the best of my recollection, approximately six.

25 Q. Am I correct, sir, that you have raised millions of dollars

1 in support of efforts to enforce the Ecuadorian judgment  
2 through this sales process since March 2014?

3 THE COURT: This is repetitious and it's beyond the  
4 scope of this hearing, which has to do with the Elliott  
5 solicitation.

6 MR. MASTRO: I understand, your Honor.

7 Q. Am I correct that you told Mr. Grinberg at the Elliott  
8 meeting that you had raised, over the course of the Ecuadorian  
9 litigation, \$33 million?

10 A. I told Mr. Grinberg that the client base in Ecuador had  
11 raised that amount of money over the entire course of the  
12 litigation since 1993. I later testified in my deposition that  
13 I think that was inaccurate.

14 Q. You thought that was too high?

15 A. I think it's too high, but I, as I sit here today, there's  
16 obviously been millions of dollars raised. I don't know the  
17 exact number. It also depends on how you count it and you  
18 count Joe Cohen's contribution and that kind of thing. But  
19 there had been, you know, there's been, you know, what some  
20 would consider to be, you know, significant resources raised to  
21 sustain a litigation over the course of the almost 25 years of  
22 its existence.

23 Q. Sir, at the meeting you had with Mr. Grinberg and his  
24 colleague at Elliott, on November the 6th, 2017, did you  
25 discuss with him how you structured deals with investors?



1 A. I did in a very general sense.

2 Q. Did you tell him that in exchange for litigation funding,  
3 that Elliott could obtain an interest in whatever judgment  
4 proceeds were ultimately generated through enforcement or  
5 settlement?

6 A. Yes.

7 Q. Did you discuss with Mr. Grinberg and his colleague at that  
8 meeting any particular percentage interests that they could  
9 acquire?

10 A. I don't believe I did.

11 Q. Did you discuss with Mr. Grinberg and his colleague at this  
12 meeting the identities of any other investors in the judgment?

13 A. I don't remember one way or another.

14 Q. You consider Mr. Grinberg to be a sophisticated party,  
15 correct?

16 A. I'm sorry, excuse me, what?

17 Q. Sophisticated person. Correct?

18 A. As regards what?

19 Q. As regards investments like this.

20 A. Yes.

21 Q. And you recall him asking you about the investment  
22 structure, correct?

23 THE COURT: Would you stay closer to the microphone,  
24 Mr. Mastro.

25 MR. MASTRO: Certainly, your Honor.

1 A. The meeting was many months ago, so I have a vague  
2 recollection only, but I do remember talking in very general  
3 terms about how the Ecuadorian client base structures its  
4 investment contracts with those who fund.

5 Q. Can you -- strike that.

6 Mr. Donziger, when you say that you discussed in  
7 general terms the structure of an investment, tell us in  
8 general terms what it was that you said.

9 A. When I say "in general terms," it's simply if an entity  
10 puts in X amount of money, we would negotiate some percentage  
11 of the interest in any collection that they would get if there  
12 were to be a collection. So -- I don't know if that answers  
13 your question.

14 Q. Yes, it does. So let me ask you a couple of follow-up  
15 questions in that regard. Am I correct that you told  
16 Mr. Grinberg and his colleague that you had already arranged  
17 sales of -- strike that.

18 Am I correct that you told Mr. Grinberg and his  
19 colleague at that November 6, 2017 meeting that you had a 6.3  
20 percent interest in the judgment?

21 A. That came up. I don't remember how. But I told him what  
22 my percentage interest was, subject, obviously, to the RICO  
23 judgment, such as I can't collect. But that's the percentage I  
24 have, or had, I guess.

25 Q. And you don't recall whether you volunteered that

1 information or whether he asked you. Is that your testimony?

2 A. I don't remember.

3 Q. Am I correct that you told him that, at this meeting --  
4 strike that.

5 Am I correct that you told Mr. Grinberg at this  
6 meeting that 15 to 20 percent of the interest in the judgment  
7 had already been given to investors or other professionals in  
8 connection with the judgment proceeds?

9 A. So my answer to that question is, I don't have a specific  
10 recollection of saying that in the meeting, but having seen the  
11 notes presented to me and understanding how I usually talk  
12 about this to potential funders, I -- that would be something  
13 consistent with what I would tell a potential funder.

14 Q. And did you tell Mr. Grinberg and his colleague that there  
15 were 15 such -- strike that.

16 Did you tell Mr. Grinberg and his colleague at this  
17 meeting on November 6, 2017 that there were approximately 15  
18 such investors or professionals who had interest in the  
19 judgment allocated to them?

20 A. I believe I did, although I don't have any specific  
21 recollection. That's roughly the case.

22 Q. Did you tell him the identities of any of those 15, besides  
23 yourself?

24 A. I, I, I don't remember. I don't believe I did, but I might  
25 have. I don't remember.

1 Q. Did you tell him that Mr. Rizack received interest in the  
2 Ecuadorian judgment from you after the RICO judgment in March  
3 2014?

4 MR. DONZIGER: Objection.

5 THE COURT: Ground?

6 MR. DONZIGER: It assumes a fact not in existence.

7 I can -- I could answer the question. I think I know  
8 what he's trying to ask. I can answer it.

9 THE COURT: Go ahead.

10 MR. DONZIGER: OK.

11 A. So the answer to your question about Mr. Rizack is, he  
12 received an interest in the judgment not from me but from the  
13 Ecuadorian client. That is the FDA people who signed these  
14 investment contracts. And that happened after the RICO  
15 judgment.

16 Q. And so was it you who arranged, on behalf of the client, to  
17 give Mr. Rizack an interest in the judgment after the RICO  
18 judgment in March 2017?

19 A. Well, I --

20 Q. March 2014.

21 A. I generally help the clients hook up with service providers  
22 they need or I believe they did. No agreement is signed  
23 without their signature and their approval. But I did  
24 facilitate that.

25 Q. And, sir, Mr. Rizack is not an accountant, correct?

1 A. That's correct.

2 Q. So he isn't actually able to do an accounting of the  
3 finances relating to the Ecuadorian --

4 A. That's not what he was brought in to do.

5 Q. Am I correct that he does personal work for you, including  
6 paying your bills?

7 A. Can you -- no, not at the moment.

8 Q. Am I correct that during the period 2014, 2015, 2016,  
9 Mr. Rizack was paying your bills, keeping track of your bills  
10 and then writing the checks to pay them?

11 MR. DONZIGER: Objection, your Honor.

12 I could talk about it, but I think it is a bit far  
13 afield from --

14 THE COURT: Well, it is far afield. And I think we  
15 had testimony about this at trial in 2014.

16 MR. MASTRO: I understand, your Honor. I'm just  
17 pointing out that Mr. Rizack got an interest in the judgment  
18 after the RICO judgment was entered, and at the time was doing  
19 only personal work for Mr. Donziger.

20 MR. DONZIGER: That's -- whoa. That's --

21 MR. MASTRO: I'll go on.

22 MR. DONZIGER: That's not true.

23 BY MR. MASTRO:

24 Q. Now, let me ask you about the Elliott meeting and some  
25 aspects of how that came about. Am I correct that it was

1 Ms. Sullivan who introduced you -- strike that.

2 Am I correct that it was Ms. Sullivan who arranged for  
3 you to meet with Elliott?

4 A. Yes.

5 Q. But you had already made a contact with Elliott years  
6 earlier, correct?

7 A. I believe -- well, I believe some were working with me and  
8 made a contact with Elliott years earlier, although I had  
9 forgotten about that until the question was brought up in my  
10 deposition this week.

11 Q. When the subject first came up of you meeting with Elliott,  
12 was it Ms. Sullivan who suggested that Elliott might be a good  
13 party to pursue for an investment in the Ecuadorian litigation?

14 A. Yes.

15 Q. And am I correct that it was Ms. Sullivan who wrote to you  
16 on October 16, 2017 that you want someone like Elliott,  
17 "someone courageous, who will understand what and why and know  
18 this investment is a hatch"?

19 THE COURT: Mr. Mastro, I've read like seven exhibits  
20 and I've read every one of them. So I don't know what purpose  
21 is served by this.

22 Q. Am I correct that Ms. Sullivan said to you at the time,  
23 October 16 of 2017, that Elliott could short Chevron stock in  
24 making this investment?

25 A. She did say that in an e-mail to me.

1 Q. And that Elliott could invest a ton of money in the case,  
2 correct?

3 A. I don't -- if you want to refer me to an exhibit that  
4 you're citing from, please do and I'll answer your question.

5 Q. Did you have in mind, in approaching Elliott, a particular  
6 level of investment that you would seek?

7 A. Not a particular number, no.

8 Q. Mr. Donziger, I'd like to refer you to what in the binder  
9 is PX 9004 but in the Grinberg exhibits already in evidence is  
10 an exhibit Grinberg 4. Do you see that, sir?

11 A. Yes.

12 Q. When Ms. Sullivan suggested Elliott as a potential  
13 investor, you responded to her, "Great," in this October 16,  
14 2017 e-mail exchange, correct?

15 MR. DONZIGER: Objection. These are all the e-mails.

16 THE COURT: Yes, I gather it is.

17 MR. MASTRO: I'm sorry?

18 THE COURT: I gather it's all in the e-mails that you  
19 put into evidence.

20 MR. MASTRO: It is. I was going to ask him a question  
21 about it, your Honor.

22 THE COURT: All right. So let's ask the question.

23 BY MR. MASTRO:

24 Q. Please tell the Court what you meant when you responded to  
25 Ms. Sullivan by "Great," in terms of approaching Elliott?

1 A. Just that it would be opportunity to meet with a fund that  
2 had capital and apparently had, you know, experience in dealing  
3 with litigation financing.

4 Q. Did you have any discussions with Ms. Sullivan about  
5 raising with Elliott that they could short the Chevron stock  
6 and win both ways?

7 A. No.

8 Q. Referring you to Exhibit No. 5 --

9 THE WITNESS: Hold on one second. Could I just  
10 elaborate on my prior answer?

11 THE COURT: That's for redirect.

12 THE WITNESS: OK.

13 BY MR. MASTRO:

14 Q. Referring you to Grinberg Exhibit No. 5, Mr. Donziger, an  
15 e-mail dated October 19, 2017 from Katie Sullivan to you, sir,  
16 do you know whether Katie Sullivan made contact with Paul  
17 Singer?

18 A. What I know based on what I remember Katie telling me is  
19 that she reached out to Paul Singer directly, I think through  
20 maybe the assistant or secretary. I don't remember her telling  
21 me she had any contact directly with Paul.

22 Q. Am I correct, Mr. Donziger, that the meeting you eventually  
23 had on November 6, 2017 was with Jesse Cohen and Mr. Grinberg?  
24 Correct?

25 A. That's correct. Mr. Cohen was in the meeting for a



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Donziger - Direct

1 relatively brief period of time, and Mr. Grinberg -- am I  
2 getting the name correct? I still --

3 Q. Yes.

4 A. Grinberg, was in the meeting for the entire time.

5 Q. And the meeting lasted 60 to 90 minutes, correct?

6 A. That's my recollection.

7 Q. From your side, Ms. Sullivan and you, who did most of the  
8 talking during the meeting?

9 A. I did.

10 Q. And you were concerned at the meeting that Elliott might be  
11 put off by the RICO judgment, correct?

12 MR. DONZIGER: Objection, form.

13 MR. MASTRO: I'll rephrase it.

14 Q. Let's go to Exhibit No. 3 under Grinberg, the first  
15 document being Mr. Grinberg's handwritten notes. Now, you took  
16 notes during this meeting as well, correct?

17 A. I'm not, I'm not sure as I sit here today. I mean, I, I, I  
18 generally take -- I have -- keep like a pad out. When I'm  
19 talking a lot, I generally don't really take very many notes.  
20 I might have jotted down something or I might not have. I  
21 don't remember.

22 Q. But you didn't produce any notes in response to Chevron's  
23 subpoena, correct?

24 A. I don't believe I have any notes.

25 Q. You couldn't find them.

1 A. If I didn't produce any, I don't believe I have any.

2 Q. Referring to Mr. Grinberg's notes of the November 6, 2017  
3 meeting, do you see there where Mr. Grinberg writes, "Can money  
4 come into U.S.?" Do you see that? Towards the bottom of the  
5 page to the left?

6 A. Yes.

7 Q. Did you discuss that topic with Mr. Grinberg during the  
8 November 6, 2017 meeting?

9 A. So to the best of my recollection I think, I think Lee  
10 raised the question of how the RICO judgment would impact any  
11 collection, or I should say any return on investment, from any  
12 investment. And I think we had a very brief discussion about  
13 that.

14 THE COURT: What was said on that subject?

15 THE WITNESS: You know, I don't remember it exactly,  
16 because -- but I will say this as a general matter. Others  
17 have asked me the same question. And I usually say I'm not  
18 really sure, because I've never seen this kind of situation.

19 And the question being, what would a U.S.-based  
20 investor -- what would happen with a U.S.-based investor upon a  
21 collection in a foreign jurisdiction. That's your question.  
22 And I don't know the answer to that.

23 BY MR. MASTRO:

24 Q. Donziger, turning to 3A, these are Ms. Sullivan's notes of  
25 the November 6, 2017 meeting. Let me just back up for one

1 second. And Mr. Grinberg's note, Exhibit 3, is there anything  
2 in Mr. Grinberg's notes that does not accurately reflect what  
3 was discussed at the meeting with Mr. Grinberg and his  
4 colleague on November 6, 2017?

5 MR. DONZIGER: Objection. The notes are very --  
6 they're not my notes, first of all. I've already testified  
7 that I think the \$33 million figure is inaccurate. A lot of  
8 it --

9 THE COURT: You think it's inaccurate in the sense  
10 that you never uttered those words, "\$33 million"?

11 THE WITNESS: No, I didn't.

12 THE COURT: Or is it now, on reflection, you don't  
13 think what you said was accurate?

14 THE WITNESS: The latter. The latter. I, I don't  
15 think it's accurate. But, again, as I testified earlier, it  
16 depends how you account for certain confusions. So I could  
17 elaborate on that, but that's, that's, you know, it's unclear  
18 to me whether it's entirely accurate.

19 BY MR. MASTRO:

20 Q. Mr. Donziger --

21 MR. DONZIGER: I'm --

22 Q. You did, you already testified that --

23 MR. DONZIGER: Hold on.

24 Q. -- you told Mr. Grinberg at this meeting --

25 MR. DONZIGER: Objection, your Honor.

1 Q. -- that you had raised \$33 million. You did say that to  
2 him at this meeting of November 6, 2017, correct?

3 A. I already testified to that, yes.

4 Q. Is there anything on this page of notes, by Mr. Grinberg,  
5 of what was said at the November 6, 2017 meeting that, as you  
6 sit here today, you think is inaccurate?

7 MR. DONZIGER: I'm going to object. First of all --

8 THE COURT: Answer the question.

9 MR. DONZIGER: I'm going to look at this quite  
10 carefully.

11 THE COURT: Well then, do it.

12 Q. Let me just clarify it for you. I'm going to clarify the  
13 question.

14 THE COURT: Look, do you want an answer or not?

15 MR. MASTRO: Yes, I do, your Honor.

16 THE COURT: Well then, let's have the answer.

17 MR. MASTRO: Certainly, your Honor.

18 A. I think -- I can't testify that notes that someone else  
19 wrote are entirely accurate without understanding what they  
20 mean. These are snippets of this and that. I don't see  
21 anything on this page, other than the 33 million, that would be  
22 patently inaccurate. But on the other hand, I can't say what  
23 some of this stuff even means, to be able to answer the  
24 question. So that's my answer.

25 THE COURT: Next question.

1 Q. Is there anything in these notes that you know wasn't said  
2 during the meeting on November 6, 2017?

3 A. Well --

4 THE COURT: I think the answer to that question is  
5 inherent in the last answer.

6 MR. MASTRO: Fine, your Honor.

7 THE COURT: Would you please move on.

8 MR. MASTRO: Certainly, your Honor.

9 Q. Let's go to 3A, please, Mr. Donziger. These are Katie  
10 Sullivan's notes of the November 6, 2017 meeting. Is there  
11 anything in Katie Sullivan's notes of the November 6, 2017  
12 meeting that you believe doesn't accurately reflect what was  
13 discussed at the meeting?

14 A. Well, I don't know what most of this stuff means or what  
15 she was thinking when she wrote some of this stuff. I mean,  
16 there's nothing that jumps out at me, looking at it all, that  
17 appears inaccurate, with the caveat again that I don't know  
18 what a lot of it means. I mean, if you want to take me through  
19 each one and tell me what you think it means, I can tell you if  
20 I think it's accurate or not. But other than that, that's my  
21 testimony.

22 Q. Mr. Donziger, referring you to the reference to 400 million  
23 frozen assets in Argentina in the middle of the first page, do  
24 you see that?

25 A. Yes.

1 Q. Is that something you recall having been said at your  
2 meeting with Elliott on November 6, 2017?

3 A. I do have a recollection of that, yes.

4 Q. And what was said in that regard and by whom?

5 A. To my best recollection, I believe I told him that at some  
6 point in Argentina, that counsel, Argentinian counsel for the  
7 Ecuadorians had succeeded in getting a court order forcing  
8 Chevron or its Argentinian subsidiary to put a certain portion  
9 of its revenues in escrow or an account under the court's  
10 auspices pending resolution of the enforcement action in that  
11 country.

12 Q. Did you say anything else on that subject?

13 A. I believe I did.

14 Q. What else did you say?

15 A. I believe I said that that money was no longer frozen or  
16 under court order, and I believe I described what had happened  
17 down there in terms of the meeting of Chevron's CEO with the  
18 Argentinian president after the lifting of that freeze order.

19 Q. So do you see there, farther down the page, where it says  
20 "1782 limitation"?

21 A. Yes.

22 Q. Was there any discussion at your meeting with Elliott about  
23 "1782 limitation"?

24 A. I don't recall.

25 Q. So you don't know what that refers to, "1782 limitation"?

1 A. No.

2 Q. Let's turn the page, please. Do you see there where,  
3 towards the bottom of the second page, Ms. Sullivan's notes of  
4 the November 6, 2017 meeting say, "Rule 65, participating  
5 violation and some court order"?

6 A. Yes.

7 Q. Do you recall that subject being discussed at the -- on  
8 November 6, 2017 meeting with Elliott?

9 A. No.

10 Q. So you don't know as you sit here today what Ms. Sullivan  
11 was referring to when she wrote that down?

12 A. No.

13 Q. Mr. Donziger, am I correct that when you refer to your  
14 clients in your testimony, what you really mean is one client,  
15 the ADF, or the Frente. Correct?

16 Yes or no, sir.

17 A. I can't answer that yes or no. I'll answer it this way.  
18 My client is the FDA, and the FDA is the beneficiary of the  
19 judgment and has a fiduciary duty, as I understand it, to  
20 execute the judgment and collect funds owed to the affected  
21 peoples by Chevron around the world. So my client is the  
22 entity that's the beneficiary of the judgment and executes it  
23 and representation of all those affected.

24 Q. Did you explain that to Elliott at the meeting you had with  
25 Elliott on November 6, 2017?

1 A. I don't recall specifically. Generally when I speak to  
2 potential funders, we explain that that is part of its  
3 structure, who would be the counterparties on any investment  
4 appeal.

5 Q. Generally you would have told a potential investor that the  
6 counterparty would be the ADF or the Frente.

7 A. Generally, yes.

8 Q. Am I correct that you sent Elliott a nondisclosure  
9 agreement just before the meeting that documented that the  
10 nondisclosure agreement would be with the ADF/Frente?

11 A. I don't recall. I believe Ms. Sullivan sent that, but I  
12 don't recall what the --

13 Q. And she received that NDA from you?

14 A. Don't recall how that NDA was put together. We have NDAs  
15 we use, and I, I don't remember putting it together. It's  
16 possible another lawyer on our team did. I don't remember.

17 Q. Ms. Sullivan is not a lawyer, correct?

18 A. That's correct.

19 Q. And am I correct that she was retained by you mostly to  
20 help fund-raise?

21 A. Fundraising was an important part of her responsibilities.  
22 She was also helping or intended to help us get a little better  
23 organized in terms of expenditures, budgets, that sort of  
24 thing.

25 Q. Did Ms. Sullivan arrange multiple meetings for you besides



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Donziger - Direct

1 the Elliott meeting with potential fund sources?

2 A. Well, I don't know what you mean by "multiple." I remember  
3 one other meeting. There might have been others.

4 Q. Ms. Sullivan was retained in approximately November of last  
5 year, correct?

6 A. My recollection is it was more like October, but in the  
7 fall of last year, yes.

8 Q. What were the terms of her retention?

9 A. I don't recall exactly. Katie is a person who wanted to  
10 get involved to help. She didn't seem particularly interested  
11 in financial compensation. I asked her if we could do some  
12 sort of contract for her services, and I believe we agreed on  
13 some sort of contract, but I don't believe she ever signed it,  
14 or maybe it was not executed. I don't remember. I know we had  
15 some document, but I believe it was never signed.

16 Q. And you have not produced that document in response to  
17 Chevron's subpoena, correct?

18 A. I don't believe I have. I don't know if I actually have  
19 it. I haven't seen it, looking through my files.

20 Q. When did Ms. Sullivan -- strike that.

21 Am I correct that Ms. Sullivan ceased to work with you  
22 in or about March of 2018?

23 A. Yes. Subsequent to the issuance of the subpoena, Chevron's  
24 subpoena to her, she ceased working with us.

25 Q. Am I correct, sir, that -- strike that.

1           What compensation did she receive for the work that  
2 she did between October 2017 and March 2018?

3 A. I don't know.

4 Q. Did she receive compensation, sir?

5 A. I am not sure. I, I, I have a recollection that she might  
6 have received some what I would consider to be pretty minimal  
7 compensation, but I'm not a hundred percent sure. I'd have to  
8 look in the budget that she kept.

9 Q. Sir, are you the one who would have approved of her  
10 compensation?

11 A. Either me or the client representatives in Ecuador or me  
12 under their authority. I don't recall how it was approved or  
13 what it was exactly.

14 Q. Did Ms. Sullivan receive any interest in the Ecuadorian  
15 judgment?

16 A. I think we had discussion about arranging something along  
17 those lines, but I don't believe it ever happened prior to her  
18 deciding to leave the, the litigation.

19           THE COURT: Are we going to get back to what happened  
20 at Elliott Management?

21           MR. MASTRO: Yes, your Honor. I was just trying to  
22 set the stage for her work.

23 BY MR. MASTRO:

24 Q. Now, Mr. Donziger, at your meeting with Elliott, did you  
25 discuss with Elliott the fact that you do not represent any of

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Donziger - Direct

1 the individual Lago Agrio plaintiffs any longer?

2 A. I don't recall. And also I don't accept that as a fact. I  
3 don't --

4 MR. DONZIGER: Objection. That's a whole 'nother  
5 area.

6 Q. Sir, in your meeting with Elliott, you were not purporting  
7 to represent any of the individual Lago Agrio plaintiffs.

8 A. Not in their individual capacity, but I represent, by  
9 virtue of my representation of the FDA, represent everybody  
10 affected. The FDA represents everybody with interests in the  
11 collection of judgment.

12 Q. And you do not represent UDAP any longer, correct?

13 A. Correct.

14 Q. So is it fair to say that you have acted on behalf of the  
15 Frente in selling interests in the judgment?

16 MR. DONZIGER: Objection. I can answer it, but --

17 Q. Let me rephrase, because I want to make sure we understand  
18 this.

19 You have not represented, to any investors, that you  
20 represent any client other than the Frente, correct?

21 A. Well --

22 Q. Let me give you a time frame for it, OK. Since the RICO  
23 judgment --

24 A. Yes.

25 Q. -- in March 2014, you have not represented, to any

1 subsequent investors, that you represent any party other than  
2 the Frente, correct?

3 A. My view is, my client is the Frente, as I've testified.  
4 And the Frente, by virtue of its unique role in the Ecuadorian  
5 judgment, as the sole and exclusive beneficiary of any  
6 collection action, acts in the interests of everybody affected,  
7 including the individually named plaintiffs. But that's  
8 correct; I do not actually have contracts with the individually  
9 named plaintiffs. But all of them are represented through the  
10 role of the Frente in the Ecuadorian judgment as a beneficiary  
11 of the judgment.

12 Q. Did you explain that to Elliott at the meeting you had with  
13 Elliott on November 6, 2017?

14 A. I don't recall that I explained that specifically.

15 Q. Now, you made an offer to Mr. Grinberg after the meeting to  
16 send him an additional packet of materials. Correct?

17 A. Yes.

18 Q. And you said it's a packet of materials that you typically  
19 give potential investors, correct?

20 A. Yes.

21 Q. Am I correct that you did not produce that packet of  
22 materials in response to Chevron's subpoena? The materials you  
23 would typically give an investor.

24 A. Well, I testified about this in my deposition, and what --  
25 the answer to that question is, we give materials to investors

1 when they ask, and we generally tailor them to the needs of the  
2 investors. So, you know, if an investor is sophisticated and  
3 wants to just know this, this certain thing, we give them that.  
4 If an investor doesn't know much about the situation and just  
5 wants to learn about it, we give him a lot of other types of  
6 material.

7 So when I said we have a packet we typically give,  
8 there are certain materials like press reports, court judgments  
9 that we usually send to everybody who we're just getting going.  
10 And I wasn't sure what Mr. Grinberg would want if anything.  
11 And the fact he didn't want anything suggested to me Elliott  
12 wasn't that interested, and I didn't really think much more of  
13 it and never sent him anything.

14 Q. You didn't produce, in response to Chevron's subpoena, any  
15 of the documents you would typically give to investors,  
16 correct?

17 A. No. The reason for that --

18 Q. I didn't ask you the reason, sir. I just asked you whether  
19 you --

20 A. -- is because of --

21 Q. And the answer is Correct?

22 A. The pending motion has now since been resolved. So I  
23 didn't revisit that issue and continue production in light of  
24 the state of play with your Honor's decision, which I just got  
25 late yesterday afternoon while preparing for this and being in

1 another deposition.

2 Q. Am I correct, Mr. Donziger, that, in response to Chevron's  
3 subpoenas, to date, these are subpoenas covering both your  
4 assets and judgment --

5 THE COURT: Look, Mr. Mastro, stick to the subject of  
6 this hearing.

7 MR. MASTRO: OK. Certainly, your Honor. Certainly.

8 THE COURT: We're not starting a seven-week trial  
9 today.

10 MR. MASTRO: OK. Certainly, your Honor. I just, I  
11 wanted the Court to be aware of the limitation --

12 THE COURT: You've made me aware. The fusillade of  
13 letters is beyond my secretary's ability to keep up with.

14 MR. MASTRO: Thank you, your Honor.

15 THE COURT: From both sides.

16 Q. Mr. Donziger, did you consider the opportunity to pitch  
17 Elliott to be a significant meeting?

18 A. I would say I considered it to be a meeting that we were  
19 happy to get that had potential significance if it were to gain  
20 traction, but I didn't go in with very high expectations.

21 (Continued on next page)

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Donziger - direct

1 Q. Mr. Donziger, just to be clear, the client you were  
2 representing at the Elliott meeting was the FDA, correct?

3 A. That's correct, subject to my prior testimony about the  
4 Frente role, yes.

5 Q. Again going back to the Elliott meeting, did you have any  
6 discussion with Mr. Grinberg and Mr. Cohen at the November 6,  
7 2017 meeting about how difficult it would be to enforce the  
8 Ecuadorian judgment in light of the RICO judgment?

9 THE WITNESS: Objection.

10 THE COURT: Overruled.

11 BY MR. MASTRO:

12 Q. Yes or no?

13 A. I generally, because I don't remember specifically  
14 everything we talked about at the 90 minute meeting, when I  
15 talked to potential funders, I always mentioned RICO. I  
16 explained Judge Kaplan's decision, I explained the view of the  
17 Ecuadorians of that decision. Respectfully to your Honor, they  
18 disagree, as do I, with a lot of the bases of that decision.

19 I count on potential funders to do their own  
20 independent due diligence about that decision and all the other  
21 court decisions in this case both in the United States, Canada,  
22 Ecuador and the international arbitration.

23 Almost all potential funders, if they express  
24 seriousness, do that due diligence and they also consult with  
25 independent counsel when doing so.

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Donziger - direct

1 Q. Mr. Donziger, did you discuss with Elliott at the November  
2 6, 2017 meeting whether the injunction, at Paragraph 5 under  
3 the court's judgment, would be any impediment to collection  
4 efforts?

5 A. I don't recall specifically.

6 Again when I speak to investors, I am working and have  
7 been working I believe in good faith off of the April 25th  
8 order of Judge Kaplan that I believe allows us, plain and  
9 express language that allows the clients in Ecuador to sell  
10 interest in the judgment to pay litigation expenses.

11 So to me at that time, it was not a controversial  
12 issue. So it is possible I didn't bring it up. It was  
13 something that I and others who had read the April 25th order  
14 felt was permissible and proper.

15 Q. So you don't recall any discussion at that meeting about  
16 the ramifications of Paragraph 5 of the RICO judgment?

17 A. No.

18 Q. Sir, immediately after the Elliott meeting on November 6th,  
19 2017, did you discuss Ms. Sullivan how the meeting had gone?

20 A. I don't remember. I mean I could speculate.

21 Q. I don't want you to speculate, sir.

22 A. Well, I don't remember what we talked about after the  
23 meeting. You mean right after we walked out of the meeting?

24 THE COURT: Look, Mr. Mastro, I would really  
25 appreciate it if you would stick to the limited purpose for



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Donziger - direct

1 which I called this hearing.

2 MR. MASTRO: I understand, your Honor. I am about to  
3 come to why I asked that question.

4 BY MR. MASTRO:

5 Q. Mr. Donziger, am I correct that shortly after the Elliott  
6 meeting ended, Ms. Sullivan sent an email to many parties,  
7 including yourself, about how the meeting had gone?

8 A. I don't recall. If you want to show me an email?

9 Q. Am I correct that in response to her email message, you  
10 responded that everyone should hold it strictly confidential  
11 and that it would be counterproductive in terms of our  
12 objectives if the meeting leaked?

13 THE WITNESS: I'm going to object. I would like to  
14 look at what Mr. Mastro is referring to. I know there is  
15 email. I think it was before the meeting, not after. That's  
16 the problem I have.

17 THE COURT: Well, Mr. Mastro, if it was before the  
18 meeting, maybe you ought to rephrase your question; and if it  
19 wasn't, maybe you need to show it to him.

20 BY MR. MASTRO:

21 Q. Let me clarify.

22 When you were scheduled to have a meeting with  
23 Elliott, did Ms. Sullivan send out an email notice to many  
24 parties, including yourself, that a meeting with Elliott had  
25 been scheduled?

I6SJCHE3

Donziger - direct

1 A. That's my recollection, yes.

2 Q. Am I correct you responded to her email on November 6,  
3 2017, telling everyone on that email that the information was,  
4 "strictly confidential and that it would be counterproductive  
5 in terms of our objectives" if the information were to leak?

6 A. I don't know what I said. I remember saying something  
7 along those lines. If you're trying to say I said what is on  
8 an email, show me an email and I will tell you if I sent the  
9 email.

10 Q. I am just asking if you recall it, Mr. Donziger?

11 A. I remember generally wanting to keep our contacts with  
12 Elliott confidential so they wouldn't get into your camp and  
13 representation of your clients so you could cause mischief, as  
14 had been done in the past. That was my view, yes.

15 Q. Am I correct that you recommended everyone on the email  
16 chain that they delete all emails relating to this subject?

17 A. Actually, that email came from another individual on the  
18 email chain, and I endorsed it, but I also agree with the  
19 subsequent email with Aaron Paige, which explains it was not to  
20 impede discovery or hide anything untoward, it was to protect  
21 confidentiality such that Chevron wouldn't be able to harass  
22 Elliott Capital, as it had done with other funders.

23 Q. Can we go to Exhibit 6 in the binder, DX-9006, the large  
24 binder.

25 A. This binder?

I6SJCHE3

Donziger - direct

1 Q. Yes.

2 THE COURT: Tab 6?

3 MR. MASTRO: Yes, your Honor.

4 (Pause)

5 BY MR. MASTRO:

6 Q. Did you have chance to review it, Mr. Donziger?

7 A. Yes, I am familiar with the email chain.

8 Q. Am I correct this is an email, dated November 6, 2017, in  
9 which you, Ms. Sullivan and others participated and that you  
10 received these emails and sent these emails?

11 A. I received this email chain, yes, and I sent the email that  
12 I sent, but not the other emails, obviously.

13 Q. But you received the other emails, correct?

14 A. Yes.

15 MR. MASTRO: I ask it be received in evidence.

16 THE COURT: Received.

17 (Defendant's Exhibit 9006 received in evidence)

18 BY MR. MASTRO:

19 Q. Mr. Donziger, let's go to the first email in the chain,  
20 MKS-93. Ms. Sullivan has sent this email to several people.

21 Are any of the people that she sent this email to  
22 other investors in the Ecuadorian judgment?

23 THE WITNESS: Objection.

24 THE COURT: Sustained.

25 BY MR. MASTRO:

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Donziger - direct

1 Q. Mr. Donziger, now Ms. Sullivan writes to you and others  
2 that she has been helping you strategize how to connect  
3 financial capital with the case. Do you see that, sir?

4 A. Yes.

5 Q. Did you understand her to mean by that she was helping you  
6 to identify potential investors from whom you could arrange on  
7 behalf of your client Frente --

8 THE WITNESS: This is long, Mr. Mastro.

9 MR. MASTRO: I will withdraw that question.

10 BY MR. MASTRO:

11 Q. Do you see there at the end of her email she talks about  
12 supercharging their efforts, meaning your efforts and your  
13 team?

14 A. Yes.

15 Q. Did you have an understanding what she meant by that?

16 A. I assume she meant we would be more effective in the  
17 endeavor.

18 Q. If you raised money?

19 A. Well, the endeavor raising money would be more effective.

20 THE COURT: Mr. Mastro, do you have any more questions  
21 about what happened at the meeting?

22 MR. MASTRO: Your Honor, I just wanted to --

23 THE COURT: I know what you want to do. I know a lot  
24 of the things you want to do. Do you have any more questions  
25 that relate to what happened at the meeting or in association

I6SJCHE3

Donziger - direct

1 with the meeting that is relevant to the purpose of this  
2 hearing?

3 MR. MASTRO: Well, your Honor, I would respectfully  
4 submit that an email chain in which Mr. Donziger is  
5 recommending and seconding that any emails on this subject  
6 should be destroyed --

7 THE COURT: But it is in evidence and I read it.

8 MR. MASTRO: That is fine, your Honor. I have it.  
9 May I talk to my client for a second, your Honor?

10 THE COURT: Sure.

11 (Off-the-record discussion)

12 BY MR. MASTRO:

13 Q. Mr. Donziger, in terms of the Elliott meeting and meetings  
14 like Elliott, am I correct that you do not get paid anything  
15 for such a meeting other than your monthly retainer and  
16 whatever contingency interest you have in the judgment?

17 A. If I understand the question as I think you intend to ask  
18 it, I don't get paid separate to do fund raising. I get paid a  
19 monthly retainer to do a whole host of things for my client,  
20 that being one of them.

21 MR. MASTRO: I don't have any further questions.

22 THE COURT: Mr. Donziger, any redirect?

23 MR. DONZIGER: I have a limited number of questions.

24 THE COURT: Go right ahead. I know it is awkward.

25 You know we have pro se litigation here and it very

I6SJCHE3

Donziger - cross

1 rarely involves money. It involves who disrespected somebody  
2 at Green Haven State Prison or something like that, and the  
3 prisoners cope with it, and I am sure you're up to it, though I  
4 understand it is awkward.

5 CROSS-EXAMINATION

6 BY MR. DONZIGER:

7 Q. Can you describe your recollection of any documents given  
8 to Mr. Grinberg at the Elliott meeting?

9 THE COURT: Okay.

10 A. When I heard Mr. Grinberg testify this morning about what  
11 he described as a marketing document, it refreshed my  
12 recollection, and I believe that document is actually a  
13 photobook put together by a photojournalist named Lou Demitas,  
14 and that describes or has photos of some of the human impacts  
15 of the oil pollution in Ecuador as well as testimonies, and it  
16 was not, to the best of my recollection, a marketing document  
17 for funders, although it is often given to funders so they can  
18 understand the human nature or human dimension of the problem.

19 Q. The second question, did you ever discuss with Ms. Sullivan  
20 in the context of the Elliott meeting that Elliott could  
21 potentially make money on both ends by shorting Chevron stock  
22 if they were to invest in the case?

23 THE COURT: There is no objection.

24 A. Okay. I don't recall whether I discussed that with her.  
25 That was something that she originally brought up as something

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1 that might be enticing or appealing to Elliott. This is not  
2 something that I brought up or endorsed. It is possible she  
3 raised with me in a conversation, I don't have any specific  
4 recollection.

5 Q. I have two more questions.

6 What is the legal basis for fund raising to pay  
7 litigation expenses in light of the RICO judgment?

8 THE COURT: Sustained. If we are going to have a  
9 legal argument, we are not going to have it from the witness  
10 stand unless it is relevant for some other reason.

11 MR. DONZIGER: That is all my questions.

12 THE COURT: Okay. In light of those questions,  
13 anything else, Mr. Mastro?

14 MR. MASTRO: No, your Honor.

15 THE COURT: You're excused. Thank you, Mr. Donziger.

16 (Witness excused)

17 THE COURT: I think that probably concludes the  
18 hearing, does it not?

19 MR. MASTRO: It does, your Honor.

20 I would appreciate a brief opportunity to explain some  
21 of the other areas we are still seeking discovery on and why we  
22 think they're irrelevant. I didn't attempt to question him  
23 because your Honor limited the scope of the hearing, and I  
24 understand that and I focused on the Elliott meeting.

25 Your Honor, had I had the chance to examine Mr.

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1 Donziger more broadly, I think I would have been able to  
2 establish through the documents that we have already obtained  
3 mostly from Ms. Sullivan, not produced by Mr. Donziger, because  
4 he has produced virtually nothing, that what basically Mr.  
5 Donziger has been doing is selling interests in the judgment  
6 and then being able to pay himself his monthly retainers, his  
7 expenses and everything.

8 THE COURT: Right, and he said that on the witness  
9 stand.

10 MR. MASTRO: I understand. We would have shown the  
11 hundreds of thousands of dollars just from the documents we  
12 were able to get for a short period of time he has put in his  
13 own pocket, and we also would have, your Honor, further  
14 established that he only represents one entity at this point  
15 and the very questionable grounds on which he should have the  
16 ability to do any such fund raising.

17 That can wait for another day.

18 THE COURT: What does the one have to do with the  
19 other? Just enlighten me.

20 MR. MASTRO: Your Honor, to us, the whole thing is a  
21 big scam and part of his ongoing fraud.

22 He is somebody who is selling interest in the  
23 judgment, he is violating the court's order and he is lining  
24 his own pockets. He has to raise the money to be able to line  
25 his own pockets and he has made himself quite a bit since doing



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1 that. We would like the court to understand the full extent of  
2 the scam and how many people have been scammed and have all of  
3 that.

4 THE COURT: I am sorry. By category, who has been  
5 scammed?

6 MR. MASTRO: Anyone who has invested since March 2014.

7 THE COURT: You think that might be a different --

8 MR. MASTRO: Since you have a right, since we believe  
9 that every time he has been soliciting and every time he has  
10 been successful in his solicitation, that has, of an investment  
11 in the judgment in exchange for an interest in the judgment,  
12 that that has violated the Paragraph 5 of the judgment.

13 THE COURT: I understand that's your position, I do.  
14 I know what his position is.

15 MR. MASTRO: I simply wanted to also point out, your  
16 Honor, and again it was beyond the scope, but Mr. Donziger has  
17 even taken the brazen position, and I would have cross-examined  
18 him on this even after the Frente, even if an argument could be  
19 made about their status, even now that the Frente has had a  
20 default judgment against him, he has every right to go out and  
21 sell interests in the judgment anyway even though he is the  
22 agent of the Frente and clearly covered by the injunction in  
23 that regard. He has brazenly taken the position and said at  
24 the deposition he absolutely has the right to do that.

25 THE COURT: That issue is not before me.

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1           MR. MASTRO: I understand. I am pointing out he will  
2 continue to be in contempt even with the default judgment  
3 against the Frente.

4           THE COURT: Look, you have a right to do what you  
5 think is appropriate to enforce what you see as your client's  
6 rights, but I am not sitting as a roving committee here. If  
7 you tee something up, I will deal with it. If you don't, that  
8 is another matter.

9           MR. MASTRO: I understand, your Honor.

10          THE COURT: Okay. Is there anything else from you,  
11 Mr. Donziger, within the bounds I put on Mr. Mastro?

12          MR. DONZIGER: I have obviously submitted papers and  
13 made my positions on this issue clear. Do you feel like you  
14 need anything else in light of what Mr. Mastro just said, which  
15 I obviously disagree with pretty much all that he just said?

16          Can I argue or do you feel like it would not be  
17 helpful to you?

18          THE COURT: I think it is probably not helpful at this  
19 point -- that was a comma, not a period. I understand that may  
20 be hard to tell sometimes. I understand what you think, Mr.  
21 Donziger, of the April 25th document said. I wrote it. I can  
22 read it. I think we may well have or there may well be a  
23 disagreement about what its significance is. I am sure there  
24 is. Certainly I know Mr. Mastro has a different view whatever  
25 it says and whatever it was could be construed as. I

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1 understand that.

2           Neither side has attempted to address whether any of  
3 this is impacted by the terms of Mr. Donziger's retention  
4 agreement, by the inter-creditor agreement, by investment  
5 agreements that were in place at relevant times. The bottom  
6 line, maybe you haven't addressed it because you thought about  
7 it and you don't think it has any impact, but I just wondered  
8 about that now.

9           If anybody thinks any further submissions about that  
10 might be useful, you are to write me a letter within 10 days as  
11 to what and why, and the letter is no more than two pages, and  
12 it is double-spaced, and then I will see whether I think any  
13 further submission will be useful, okay?

14           MR. MASTRO: Yes, your Honor, we will definitely do  
15 that. I just wanted to point out that Mr. Donziger did testify  
16 that he has a new retention agreement as of 2016-17 with the  
17 Frente, and he has not produced that to us. We are prepared to  
18 do this analysis, but it would be even more constructive if he  
19 actually produced his --

20           THE COURT: Why shouldn't that be produced?

21           MR. DONZIGER: It is, and I have it right here. I  
22 will produce it right now. I am not going to argue against Mr.  
23 Mastro. As a lawyer and officer of the court, I will direct  
24 this to you directly. This is a contempt hearing. I don't  
25 want to be in contempt of the court. I am not at this point

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1 arranging any more financing, and I can't until I get clarity,  
2 some sort of clarification from your Honor what is, in your  
3 view, permissible or not permissible. I want to be clear about  
4 that because --

5 THE COURT: Look, I appreciate that, but you seriously  
6 need to consider whether, even if you are right as to what  
7 happened in days of yore, whatever that argument has any  
8 traction at all from the minute the judgment was entered  
9 against all your clients, including the Frente, which I won't  
10 prejudge it, but it certainly is a different set of facts. I  
11 am not going to give you a declaratory judgment.

12 MR. DONZIGER: On that point, you're referring to the  
13 default judgment?

14 THE COURT: Yes, sure.

15 MR. DONZIGER: Just to be clear, I testified in my  
16 deposition that I thought that it did not change the landscape  
17 in terms of fund raising. I, upon further reflection, realized  
18 that that is a mistake and not my position. I didn't quite  
19 understand the situation when I said that. To the extent you  
20 read my deposition or they raise it, I want to be clear about  
21 that.

22 THE COURT: I am nodding not to evidence agreement,  
23 but to acknowledge the fact you have said something.

24 MR. DONZIGER: Thank you.

25 THE COURT: I think everybody will have to think about

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1 that down the road, okay?

2 Anything else? Okay. Thank you.

3 (Court adjourned)

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PLAINTIFF EXHIBITS

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DEFENDANT EXHIBITS

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# EXHIBIT 4

Ecuador Judgment Investment Agreement

Dated: May 2, 2016

In consideration of an investment of \$250,000 to help fund the collection by the claimants and the Frente de Defensa de la Amazonia (together, the "Claimants") of the Ecuador environmental judgment (as defined below) against Chevron and/or its subsidiaries ("Chevron"), the Claimants and the Funder hereby agree as follows:

**\*\*Grant of an interest:** The Claimants hereby grant the Funder .125% ("percentage interest") of the total amount of the Ecuador judgment. The "Ecuador judgment" means the net amount of all funds actually collected by Claimants from Chevron, in connection with the enforcement of the Ecuador environmental damages judgment against Chevron. The net amount shall include any settlements of claims by Chevron; any judicial orders obtained by Claimants against Chevron that result in the recovery of funds, non-monetary assets, or anything of value. This includes, without limitation, any interest payments on the pending judgment, fees, penalties, and the 10% of the judgment apart from actual damages due the Frente de Defensa de la Amazonia ("FDA"), under Ecuador's Environmental Management Law.

**\*\* Follow on Investment Right:** The Funder shall have the right to participate in or invest alongside one or more future investments in the collection of the Ecuador judgment, up to a maximum of an additional \$250,000 in each round, at a 25% discount to the negotiated terms of any such future investments.

**Obligations to Funder and Equity Holders:** All obligations to the Funder and other third-party equity holders (including lawyers, investors and consultants who are owed compensation by the claimants) will be satisfied "pari passu" among themselves prior to any distributions to the claimants based on their percentage share of the total amount collected from the Ecuador judgment by the claimants anywhere in the world. The "total amount collected" includes actual damages, the 10% additional compensation due to the FDA, interest payments on the judgment, any other fees, or anything of value recovered.

**Distribution of funds – priority of payments:** In order of priority, with respect to any funds received from the Ecuador judgment that become available for distribution under this Agreement, Claimant will pay the Funder the Percentage Interest "pari passu" with other third-party equity holders (including lawyers, investors and consultants who are owed compensation by the Claimants) prior to Claimant receiving its percentage interest with respect to such funds.

**Partial Recovery in non-settlement scenario:** To the extent the collection of funds from the Ecuador judgment takes place without a settlement and on a partial or incremental basis, the Funder and other equity holders will be compensated their respective percentage interests on a "pari passu" basis with the Claimant, until all equity holders are paid fully. Such payments shall be made forthwith upon receipt of any funds recovered under the terms of this Agreement.

**Settlement subsequent to partial recovery:** Should any final and voluntary settlement of claims occur subsequent to a partial recovery, the Funder and all equity holders will be compensated in full prior to claimants, in the order of priority as outlined herein.

**Collection of judgment funds outside Canada:** Should any funds from the Ecuador judgment be collected from Chevron from any jurisdiction outside Canada, counsel or any other authorized representative of the Claimants in such jurisdiction shall be instructed by claimants to distribute any such funds to the Funder and other equity holders in accordance with their respective Percentage Interests and in the same order of priority as set forth above.



Obligations of the FDA: The FDA agrees that the full amount of its 10% award due under the judgment against Chevron shall, if necessary, be used to guarantee full payment to the Funder and other equity holders in the judgment, or to otherwise effectuate compliance with all terms of this Agreement.

Binding and irrevocable authority of the FDA: The signatory of the FDA to this agreement affirms he has the authority to bind the organization and fully and irrevocably to all obligations under this Agreement.

Payment of Investment Amount: Simultaneously with execution and delivery of this Agreement, the Funder will deposit \$250,000 with an escrow agent who will be instructed by the Funder to transfer said funds to the law firm of Lenczner Slaght in Toronto, Ontario.

Escrow Agent: The Funder will deposit the designated amount of funds with an independent law firm in Canada (other than Lenczner Slaght) that will serve as an escrow agent for the Funder, both in the distribution of the Funder's invested funds, either now or in the future, and in the collection of any recovered funds from Canada (or another jurisdiction, if applicable) for the Funder under this agreement.

Use of proceeds: The proceeds of the Funder's investment shall be used to fund litigation and other expenses dedicated to securing collection of the Ecuador judgment in Canada and other jurisdictions as may be determined.

Instructions: The claimants and the FDA, and their representatives, will, in timely fashion and as frequently as necessary, instruct all counsel in Canada and elsewhere involved in the collection of the Ecuador environmental judgment of the obligations under this Agreement, so that its terms will be effectuated forthwith upon collection of any funds under the Ecuador judgment. In any event, claimants agree that any payments due the Funder or other equity holders from any recovery under the Ecuador judgment will be transferred in full within ten days of the receipt of any funds.

Information: Investor will be kept apprised on a regular basis of all material developments in the litigation.

Counterparts: This Agreement may be signed in multiple counterparts. Each counterpart shall be considered an original instrument, but all of them in the aggregate shall constitute one agreement.

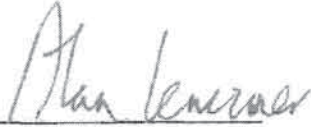
Confidentiality: The parties agree that the details of this Agreement, and all related communications, will be kept confidential as between the parties and will not be divulged to third parties.

Conflict of languages: To the extent there is a conflict between the English and Spanish versions of this Agreement, the English version shall apply.

Governing law: This Agreement shall be governed by the law of Ontario, Canada. The courts of Ontario shall have exclusive jurisdiction to hear any claim or dispute related to this Agreement.

Dated: May 2, 2016

\_\_\_\_\_  
Client Representative, FDA

  
\_\_\_\_\_  
Alan Lenczner, Counsel for Claimants, Canada  
Acknowledged and Accepted

Glen J. Kulin  
Funder

5/31/2016

Addendum to Ecuador Judgment Investment Agreement Dated May 2, 2016

Assignment: Nothing in the Ecuador Judgment Investment Agreement (dated May 2, 2016) should be interpreted to prevent the Funder from exercising an exclusive right to assign his interest or any portion thereof to a member of his immediate family, or to a trust for the primary benefit of an immediate family member.

\_\_\_\_\_  
Client Representative, FDA

A handwritten signature in black ink, appearing to read "Alan Lenczner". The signature is fluid and cursive, with the first name "Alan" and last name "Lenczner" clearly distinguishable.

Alan Lenczner, Counsel for Claimants, Canada  
Acknowledged and Accepted

\_\_\_\_\_  
Funder

Addendum to Ecuador Judgment Investment Agreement Dated May 2, 2016

Assignment: Nothing in the Ecuador Judgment Investment Agreement (dated May 2, 2016) should be interpreted to prevent the Funder from exercising an exclusive right to assign his interest or any portion thereof to a member of his immediate family, or to a trust for the primary benefit of an immediate family member.

Dated: May 20, 2016

\_\_\_\_\_  
Client Representative, FDA

\_\_\_\_\_  
Alan Lenczner, Counsel for Claimants, Canada  
Acknowledged and Accepted

  
\_\_\_\_\_  
Funder

# EXHIBIT 5



## Ecuador Judgment Investment Agreement

Dated: July 11, 2016

In consideration of an investment of \$250,000 to help fund the collection by the claimants and the Frente de Defensa de la Amazonia (together, the "Claimants") of the Ecuador Judgment (as defined below) against Chevron and/or its subsidiaries ("Chevron"), the Claimants and the Funder hereby agree as follows:

**Grant of an Interest:** The Claimants hereby grant the Funder .125% ("Percentage Interest") of the total amount of the Ecuador Judgment. The "Ecuador Judgment" means the total amount of all funds actually collected by Claimants from Chevron, in connection with the enforcement of the Ecuador environmental damages judgment against Chevron. The total amount shall include any settlements of claims by Chevron; any judicial orders obtained by Claimants against Chevron that result in the recovery of funds, non-monetary assets, or anything of value. This includes, without limitation, any interest payments on the pending judgment, fees, penalties, and the 10% of the judgment apart from actual damages due the Frente de Defensa de la Amazonia ("FDA"), under Ecuador's Environmental Management Law.

**Follow on Investment Right:** The Claimants hereby grant the Funder the right to participate in or invest alongside one or more future investments in the collection of the Ecuador Judgment, up to a maximum of an additional \$250,000 in each round, at a 25% discount to the negotiated terms of any such future investments.

**Obligations to Funder and Equity Holders:** All obligations to the Funder and other third-party equity holders (including lawyers, investors and consultants who are owed compensation by the Claimants) will be satisfied "pari passu" among themselves, prior to any distributions to the Claimants, based on their percentage share of the total amount collected from the Ecuador Judgment by the Claimants anywhere in the world. The "total amount collected" includes actual damages, the 10% compensation due to the FDA, interest payments on the judgment, any other fees, or anything of value recovered.

**Distribution of Funds - Priority of Payments:** In order of priority, with respect to any funds received from the Ecuador Judgment that become available for distribution under this Agreement, Claimants will pay the Funder the Percentage Interest "pari passu" basis with other equity holders (including lawyers, investors and consultants who are owed compensation by the Claimants) prior to Claimants receiving its percentage interest with respect to such funds.

**Partial Recovery in Non-Settlement Scenario:** To the extent the collection of funds from the Ecuador Judgment takes place without a settlement and on a partial or incremental basis, the Funder and other equity holders will be compensated their respective percentage interests on a "pari passu" basis prior to Claimants receiving its percentage interest, until all equity holders are paid fully. Such payments shall be made forthwith upon receipt of any funds recovered under the terms of this Agreement.

Settlement Subsequent to Partial Recovery: Should any final and voluntary settlement of claims occur subsequent to a partial recovery, the Funder and all equity holders will be compensated in full prior to Claimants, in the order of priority as set forth above.

Collection of Judgment Funds Outside Canada: Should any funds from the Ecuador Judgment be collected from Chevron from any jurisdiction outside Canada, counsel or any other authorized representative of the Claimants in such jurisdiction shall be instructed by Claimants to distribute any such funds to the Funder and other equity holders in accordance with their respective percentage interests and in the same order of priority as set forth above.

Obligations of the FDA: The FDA agrees that the full amount of its 10% award due under the judgment against Chevron shall, if necessary, be used to guarantee full payment to the Funder and other equity holders in the judgment, or to otherwise effectuate compliance with all terms of this Agreement.

Binding and Irrevocable Authority of the FDA: The signatory of the FDA to this agreement affirms he has the authority to bind the organization fully and irrevocably to all obligations under this Agreement.

Payment of Investment Amount: Simultaneously with execution and delivery of this Agreement, the Funder (unless he chooses to work through an Escrow Agent) will deposit \$250,000 with the law firm of Lenczner Slaght in Toronto, Ontario.

Escrow Agent: The Funder will deposit the designated amount of funds with an independent law firm in Canada (other than Lenczner Slaght) that will serve as an escrow agent for the Funder, both in the distribution of the Funder's invested funds, either now or in the future, and in the collection of any recovered funds in Canada (or another jurisdiction, if applicable) for the Funder under this Agreement.

Use of Proceeds: The proceeds of the Funder's investment shall be used to fund litigation and other expenses dedicated to securing collection of the Ecuador judgment in Canada and other jurisdictions as may be determined.

Instructions: The Claimants, the FDA, and their representatives will, in a timely fashion and as frequently as necessary, instruct all counsel in Canada and elsewhere involved in the collection of the Ecuador Judgment of the obligations under this Agreement, so that its terms will be effectuated forthwith upon collection of any funds under the Ecuador Judgment. In any event, Claimants and the FDA agree that any payments due the Funder or other equity holders from any recovery under the Ecuador Judgment will be transferred in full within ten days of the receipt of any funds.

Information: Investor will be kept apprised on a regular basis of all material developments in the litigation.

Counterparts: This Agreement may be signed in multiple counterparts. Each counterpart shall be considered an original instrument, but all of them in the aggregate shall constitute one agreement.

Confidentiality: The parties agree that the details of this Agreement, and all related communications, will be kept confidential as between the parties and will not be divulged to third parties.

Conflict of Languages: To the extent there is a conflict between the English and Spanish versions of this Agreement, the English version shall apply.

Assignment: References to the parties include their assignees, transferees and successors-in-title and shall include both corporate and unincorporated associations, partnerships, and individuals. Nothing in this agreement can be construed to block the Funder from assigning all or part of his interest to a member of his immediate family, or to a trust for the benefit of an individual in his immediate family.

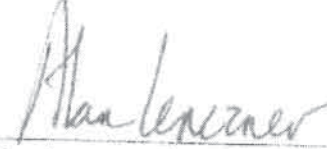
Governing Law: This Agreement shall be governed by the law of Ontario, Canada. The courts of Ontario shall have exclusive jurisdiction to hear any claim or dispute related to this Agreement.

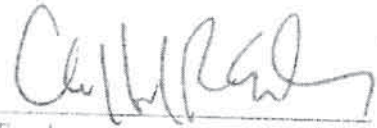
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Dated: July 11, 2016

  
\_\_\_\_\_  
Client Representative, FDA

  
\_\_\_\_\_  
Alan Lenczner, Counsel for Claimants, Canada  
Acknowledged and Accepted

  
\_\_\_\_\_  
Funder

Ecuador Judgement Investment Agreement

Page 4

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1/3/20

MKS-0002602

# EXHIBIT 6

## CERTIFICACIÓN

En calidad de Secretaria General del Frente de Defensa de la Amazonía –FDA–, doy a conocer la resolución emitida en la reunión extraordinaria del Concejo Ejecutivo el día 29 de agosto del presente año. Dicha resolución dice lo siguiente:

1. *Que el concejo ejecutivo, fundamentado en el artículo 32 literal h del estatuto del Frente de Defensa de la Amazonía, autoriza al compañero Carlos Humberto Guamán Gaibor, representante legal del FDA, la suscripción del contrato de financiamiento de 300.000 dólares americanos que serán destinados para los gastos de ejecución de la sentencia "Aguinda vs Chevron" en Canadá.*

Dado y firmado en Nueva Loja, el 29 de Agosto de 2016.



Srta. Gladys Solano

SECRETARIA GENERAL FDA



## Ecuador Judgment Investment Agreement

In consideration of an investment of \$300,000 from the Funder (defined below) to help fund the collection of the Ecuador Judgment (defined below) against Chevron and/or its subsidiaries ("Chevron"), the Frente de Defensa de la Amazonia ("FDA"), in its capacity as both the exclusive interest-holder of the 10% award made by the Ecuador Judgment under Ecuador's Environmental Management Law ("the 10% Award") and the beneficiary of the environmental remediation award and related awards under the Ecuador Judgment and the Ecuador Trust (defined below), together with the President of the Board of the Ecuador Trust (defined below), and the Funder, hereby agree as follows:

### 1. Definitions:

- a. Ecuador Judgment: The final judgment and award in the case of *Maria Aguinda et al. v. Chevron Corp.*, rendered in the first instance by the Provincial Court of Justice of Sucumbios, 14 Feb. 2011, affirmed on appeal by the Sole Chamber of the Provincial Court of Justice of Sucumbios, 3 Jan. 2012, certified for enforcement on 17 Feb. 2012, and affirmed by the National Court of Justice, 12 Nov. 2013. "Ecuador Judgment" in this Agreement refers to the legal obligation imposed on Chevron by the Ecuadorian courts as reflected in the aforementioned decisions (attached in Appendix 1) collectively.
- b. Ecuador Trust: "FIDEICOMISO MERCANTIL DE ADMINISTRACIÓN DE FLUJOS ADAT," created 1 March 2012 in Quito, Ecuador, pursuant to instructions in the Ecuador Judgments, in which the individual claimants in the *Aguinda* case placed the entirety of their interest in trust for the implementation of remediation and payment of related expenses, naming the Frente de Defensa de la Amazonia (FDA) as the sole beneficiary. Attached in Appendix 1.

### 2. Parties and Agents:

- a. "FDA": Frente de Defensa de la Amazonia
- b. "Trust Board President": Mr. Ermel Gabriel Chávez Parra, duly appointed President of the Board of the Ecuador Trust.
- c. "Ecuador Parties": The FDA and the Trust Board President.
- d. "Canadian Counsel": Lenczner Slaght Royce Smith Griffin LLP.
- e. "Funder": As identified in Appendix 2, in the possession of Canadian Counsel.
- f. "Funding Escrow Agent": Beard Winter LLP
- g. "U.S. Representative": As identified in Appendix 2, in the possession of Canadian Counsel.

3. Grant of Interest:

- a. Grant: The FDA and the Trust President hereby grant the Funder an Interest ("Funder's Interest") of 0.165% of the total amount of the Ecuador Judgment and the Ecuador Judgment Gross Proceeds (defined below) as further set forth herein.
  - b. Definition of Ecuador Judgment Gross Proceeds: "Ecuador Judgment Gross Proceeds" means the total amount of any and all funds actually collected by the Ecuador Parties or any of their agents or related parties related to the Ecuador Judgment, including, without limitation, any settlement monies paid by Chevron; any judicial orders obtained by claimants against Chevron that result in the recovery of funds, non-monetary assets, or anything of value; the 10% Award to the FDA; any post-judgment interest payments or penalties awarded by the Canadian courts or any court, and any additional award of fees or expenses by the Ecuadorian, Canadian, or any other court. Ecuador Judgment Gross Proceeds includes, without limitation, any interest payments on the pending judgment, fees, penalties, and the 10% Award.
4. Ecuador Parties' Guarantee of Obligations: The FDA warrants that it is the sole beneficiary of the Ecuador Judgment in trust and FDA hereby irrevocably warrants that the Funder is legally entitled to receive, and will receive, its Interest in accordance with this Agreement. Other than the Parties to this Agreement, as defined above, the Funder will have no obligations to third parties. Notwithstanding that the Ecuador Parties acknowledge that over the course of the litigation against Chevron, they have entered into various contracts with funders, lawyers, and other service providers (including the Priority Existing Equity Holders identified by the Ecuador Parties in Appendix 3 to this Agreement and the Distribution Escrow Agreement), which also provide a grant of interest in the Ecuador Judgment Gross Proceeds, the Ecuador Parties guarantee to the Funder that the Funder's Interest does not infringe directly and/or indirectly on those contracts and that its Interest will absolutely be honored out of the Gross Proceeds recovered.
5. Co-ownership of Ecuador Judgment: As per this Agreement, the Funder will be a co-owner of the Ecuador Judgment up to the amount of his Interest in the Judgment. The Funder will not have the independent power to enforce his ownership Interest against Chevron or its subsidiaries. The Ecuador Parties, together with the *Aguinda* claimants and the communities affected by Chevron's contamination, retain ultimate authority over settlement and disposition of the dispute.
6. Investment Deemed to be Made: Once Funder transfers and clears the full amount of the investment to the Funding Escrow Account, the investment will have been deemed to be made and the Funder will be absolutely and irrevocably entitled to the Funder's Interest as defined above and will immediately become the co-owner of the Ecuador Judgment as also defined above, subject only to the conditions and limitations outlined herein.
7. Agreements of Ecuador Parties: The Ecuador Parties hereby agree with Funder as follows:



- a. Settlement Process: The FDA will lead the establishment of a Settlement Oversight Committee to facilitate and advise on any settlement opportunities. Members will include Canadian Counsel, two representatives appointed by the FDA, and the U.S. Representative.
- b. Additional Representations: The Ecuador Parties hereby represent, warrant and confirm that:
- i. they have (A) full power and authority to enter into and perform their obligations under this Agreement, (B) duly authorised the execution, delivery and performance of their obligations under this Agreement, and (C) obtained all necessary registrations, consents and approvals related to their execution, delivery and performance of their obligations under this Agreement;
  - ii. the execution and the delivery of this Agreement does not in any way contravene any laws, rulings, or public policies whether in Ecuador or Canada, nor contravene any of the Ecuador Parties' constituent or other governing documents or another contracts, commitments, or obligations of the Ecuador Parties or their affiliates or representatives (on their behalf) with any third parties; and
  - iii. the Ecuador Parties make to the Funder each of the representations and warranties set forth in clauses 10.2(a) through and including (p) of the Funding Agreement between Treca Financial Solutions, the FDA and the Claimants (as defined therein), in the form delivered by FDA to Funder, as if such representations and warranties were incorporated into this Agreement and made a part hereof and were made to Funder *mutatis mutandis* with application to this Agreement and the obligations of the Ecuador Parties and the transactions contemplated by this Agreement.
- c. The Ecuador Parties agree and confirm that upon the receipt of the Ecuador Judgment Gross Proceeds the Funder will be entitled to and will receive promptly the Funder's Interest in accordance with the "Grant of Interest" provision of this Agreement.
- d. Escrow Agent Provisions:
- i. The Ecuador Parties irrevocably authorize Canadian Counsel to be the Exclusive Distribution Escrow Agent to collect any of the Ecuador Judgment Gross Proceeds and to distribute said proceeds in accordance with this Agreement.
  - ii. Canadian Counsel hereby confirms that the execution and the delivery of this Agreement does not contravene any laws, rulings and public policies in Canada.

- iii. The Canadian Counsel confirms, as the Exclusive Distribution Escrow Agent, that upon collection of any of the Ecuador Judgment Gross Proceeds, the Funder will receive the Funder's Interest in accordance with this Agreement and in accordance with the Distribution Escrow Agreement (defined below) that shall be approved and executed by the Funder and the Ecuador Parties no later than three (3) weeks from the Notice to Fund.
8. Conditions to Requirement to Transfer Funds: The investment will be in the amount of \$300,000. In satisfaction of the investment amount, the Funder shall cause an amount equal to \$300,000 less up to \$15,000 for legal fees in connection with this Agreement and advice related to the transactions contemplated hereby, to be paid to Funding Escrow Agent. The transfer of the investment by the Funder is subject to: (i) the Notice to Fund; (ii) delivery of a certificate by the Ecuador Parties certifying that this Agreement has been approved by the FDA Executive Committee the Trust, and each other governing body of an Ecuador Party and that all other representations and warranties made by the Ecuador Parties made in or incorporated into this Agreement remain true, correct and complete as of the date of the funding; (iii) the approval and execution of the Funding Escrow Agreement by the Funding Escrow Agent and all the relevant parties and stakeholders sufficient for the establishment of the Funding Escrow Account set forth below; and (iv) confirmation given by Canadian Counsel as articulated in this Agreement.
9. Escrow Accounts: Two escrow accounts will be created by Canadian Counsel, as follows:
- a. The first escrow account ("Funding Escrow Account") will be created by the Funding Escrow Agent to hold investment monies transferred under this Agreement in escrow to be distributed per the instructions of the U.S. Representative, the Funder, and a representative to be appointed by the FDA. Upon due consultation, final authority over distribution of said funds will rest with the U.S. Representative.
  - b. The second escrow account ("Distribution Escrow Account") will be created by Canadian Counsel to collect the Ecuador Judgment Gross Proceeds and distribute said proceeds to satisfy the Funder's Interest and other equity holders as set forth above and then distribute funds to the Ecuador Trust for environmental remediation and/or to otherwise implement the remediation ordered by the Ecuador Judgment.
10. No Further Funding Requirement: Canadian Counsel, the Ecuador Parties, and the US Representative hereby confirm to the Funder that upon the investment being made, under no circumstances, will there be a requirement for further funding from the Funder in order to conclude all of the procedures in Canada related to the enforcement of the Ecuador Judgment and the collection of the Ecuador Judgment Gross Proceeds.
11. Use of funds: From time to time, and in order to determine how the Investment will be spent, a budget shall be agreed upon and approved by the US Representative and the Funder, with the US Representative having final authority in the event of a conflict. The Investment shall be used to fund litigation and other expenses dedicated to securing collection of the Ecuador Judgment in Canada and other jurisdictions as may be determined.

12. Obligations of the Funder: Once the Funder has made its investment, the Funder will be under no other obligation whatsoever as per this Agreement.
13. No Dilution: The Funder will not be subject to any dilution of Funder's Interest as defined above.
14. No responsibility for environmental remediation: The Funder will have no responsibility whatsoever for environmental remediation in the area of Ecuador affected by the Ecuador Judgment.
15. Obligations towards the Funder: The Ecuador Parties hereby irrevocably warrant that all obligations towards the Funder will be satisfied in accordance with this Agreement and the Distribution Escrow Agreement prior to any distributions to the Ecuador Parties, the Ecuador Trust, or any Claimants, based on its Interest in the total amount collected from the Ecuador Judgment Gross Proceeds by the Canadian Counsel or any other Counsel for and on behalf of the Ecuador Parties anywhere in the world.
16. Partial Recovery in Non-Settlement Scenario: To the extent the collection of funds from the Ecuador Judgment takes place without a settlement and on a partial or incremental basis, the Ecuador Parties hereby irrevocably warrant that the Funder (along with other Priority Existing Equity Holders as listed in Appendix 3) will be compensated a percentage of funds corresponding to their respective interests assuming a full recovery, prior to any payments to the Ecuador Parties or any other party or stake-holder receiving any interest with respect to such funds. Such payments shall be made forthwith upon receipt of any funds recovered under the terms of this Agreement.
17. Collection of Judgment Funds Outside Canada: Should any part of the Ecuador Judgment Gross Proceeds be collected from Chevron from any jurisdiction outside Canada, Canadian Counsel as the Exclusive Distribution Escrow Agent will collect and distribute any such funds to the Funder and any Priority Existing Equity Holders as listed in Appendix 3 in accordance with their respective interests and in accordance with the Distribution Escrow Agreement.
18. Obligations of the FDA: The FDA hereby irrevocably warrants that the full amount of its 10% award due under the judgment against Chevron plus any interest on the judgment collected in any enforcement jurisdiction, shall be used to guarantee full payment to the Funder and any Priority Existing Equity Holders as listed in Appendix 3 until all have fully received their Interests as per this Agreement and others referenced in the Appendix.
19. Obligations of Canadian Counsel: Canadian Counsel hereby accepts irrevocable instructions to adhere to all of the terms of this Agreement and will abide by those instructions.
20. Binding and Irrevocable Authority of the FDA: The signatory of the FDA to this Agreement (upon ratification of the FDA Executive Committee) affirms he has the authority to bind the organization.




21. Instructions: The FDA and its representatives will, in a timely fashion and as frequently as necessary, instruct the Canadian Counsel in Canada and other Counsels elsewhere involved in the collection of the Ecuador Judgment of the obligations under this Agreement, so that its terms will be effectuated forthwith upon collection of any funds under the Ecuador Judgment. In any event, the Ecuador Parties agree that any payments due to the Funder from any recovery under the Ecuador Judgment will be transferred in full within one week of the final receipt of any funds in accordance with this Agreement and the Distribution Escrow Agreement.
22. Information: Investor will be kept apprised on a regular basis of all material developments in the litigation and shall provide all documents or other information as are reasonably requested by Funder.
23. Common Legal Interest: The FDA, Trust and Funder have a "common legal interest" in the Claim, this Agreement and any discussion, evaluation and negotiation or other communications and exchanges of information relating thereto.
24. Counterparts: This Agreement may be signed in multiple counterparts. Each counterpart shall be considered an original instrument, but all of them in the aggregate shall constitute one Agreement.
25. Confidentiality: The Parties agree that the details of this Agreement, and all related communications, will be kept confidential as between the Parties and will not be divulged to third Parties.
26. Conflict of Languages: To the extent there is a conflict between the English and Spanish versions of this Agreement, the English version shall apply.
27. Assignment: This Agreement shall inure to the benefit of, and shall be binding upon the parties hereto and their respective assignees, transferees and successors-in-title or interest. References to the parties include their assignees, transferees and successors-in-title or interest, and shall include both corporate and unincorporated associations, partnerships, and individuals. Neither this Agreement, nor any rights, interests, obligations and duties arising hereunder may be assigned or conveyed; provided, however, that nothing in this agreement can be construed to block the Funder from assigning all or part of his interest to a member of his immediate family, or to a trust, pension plan or other entity for the benefit of the Funder or one or more individuals in his immediate family.
28. Severability & Invalidity: If any term or provision in this Agreement will in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement will not be affected.

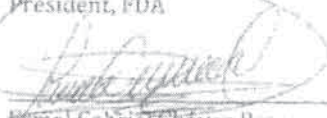
29. Other Third-party commitments: The Parties warrant to each other that the execution and the delivery of this Agreement are not against any commitments, contracts and / or other obligations that they have with other third Parties.
30. Authority: Canadian Counsel confirms that the Ecuador Parties have the authority to enter into this Agreement and that it is binding and enforceable against them.
31. Entire Agreement: This Agreement shall constitute the entire agreement between the parties hereto, and shall supersede all prior agreements, understandings and negotiations between the parties with respect to the subject matter of this Agreement.
32. Governing law: This Agreement shall be governed by the law of Ontario, Canada. The courts of Ontario shall have exclusive jurisdiction to hear any claim or dispute related to this Agreement.

Dated: 24 August 2016

DATED: 24/08/2016

  
\_\_\_\_\_  
Carlos Guaman-Galbor  
President, FDA

DATED: 24/08/2016

  
\_\_\_\_\_  
Daniel Gabriel Chávez Parra  
BOARD PRESIDENT, ECUADOR TRUST

DATED: \_\_\_\_\_

\_\_\_\_\_  
FUNDER

DATED: \_\_\_\_\_

\_\_\_\_\_  
Alan Lenczner  
Lenczner Slaughter Royce Smith Griffin LLP  
*All Instructions Acknowledged and Accepted*

will receive the Funder's Interest in accordance with this Agreement and in accordance with the Distribution Escrow Agreement (defined below) that shall be approved and executed by the Funder and the Ecuador Parties no later than three (3) weeks from the Notice to Fund.

8. Conditions to Requirement to Transfer Funds: The investment will be in the amount of \$300,000. In satisfaction of the investment amount, the Funder shall cause an amount equal to \$300,000 less up to \$15,000 for legal fees in connection with this Agreement and advice related to the transactions contemplated hereby, to be paid to Funding Escrow Agent. The transfer of the investment by the Funder is subject to: (i) the Notice to Fund; (ii) delivery of a certificate by the Ecuador Parties certifying that this Agreement has been approved by the FDA Executive Committee the Trust, and each other governing body of an Ecuador Party and that all other representations and warranties made by the Ecuador Parties made in or incorporated into this Agreement remain true, correct and complete as of the date of the funding; (iii) the approval and execution of the Funding Escrow Agreement by the Funding Escrow Agent and all the relevant parties and stakeholders sufficient for the establishment of the Funding Escrow Account set forth below; and (iv) confirmation given by Canadian Counsel as articulated in this Agreement.
9. Escrow Accounts: Two escrow accounts will be created by Canadian Counsel, as follows:
  - a. The first escrow account ("Funding Escrow Account") will be created by the Funding Escrow Agent to hold investment monies transferred under this Agreement in escrow to be distributed per the instructions of the U.S. Representative, the Funder, and a representative to be appointed by the FDA. Upon due consultation, final authority over distribution of said funds will rest with the U.S. Representative.
  - b. The second escrow account ("Distribution Escrow Account") will be created by Canadian Counsel to collect the Ecuador Judgment Gross Proceeds and distribute said proceeds to satisfy the Funder's Interest and other equity holders as set forth above and then distribute funds to the Ecuador Trust for environmental remediation and/or to otherwise implement the remediation ordered by the Ecuador Judgment.
10. No Further Funding Requirement: <sup>✓ A-✓</sup> ~~Canadian Counsel, The Ecuador Parties, and the US Representative hereby confirm to the Funder that upon the Investment being made, under no circumstances, will there be a requirement for further funding from the Funder in order to conclude all of the procedures in Canada related to the enforcement of the Ecuador Judgment and the collection of the Ecuador Judgment Gross Proceeds.~~ <sup>✓ D.2</sup> <sup>✓ in Canada</sup>
11. Use of funds: From time to time, and in order to determine how the Investment will be spent, a budget shall be agreed upon and approved by the US Representative and the Funder, with the US Representative having final authority in the event of a conflict. The Investment shall be used to fund litigation and other expenses dedicated to securing collection of the Ecuador Judgment in Canada and other jurisdictions as may be determined.



30. Authority: Canadian Counsel confirms that the Ecuador Parties have the authority to enter into this Agreement and that it is binding and enforceable against them.
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Dated: 24 August 2016

DATED: \_\_\_\_\_

\_\_\_\_\_  
Carlos Guaman Gaibor  
President, FDA

DATED: \_\_\_\_\_

\_\_\_\_\_  
Ernel Gabriel Chávez Parra  
BOARD PRESIDENT, ECUADOR TRUST

DATED: \_\_\_\_\_

\_\_\_\_\_  
FUNDER

DATED: \_\_\_\_\_

*September 16,  
2016*

*Alan Lenczner*  
\_\_\_\_\_  
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
*All Instructions Acknowledged and Accepted*



29. Other Third-party commitments: The Parties warrant to each other that the execution and the delivery of this Agreement are not against any commitments, contracts and / or other obligations that they have with other third Parties.

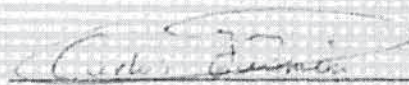
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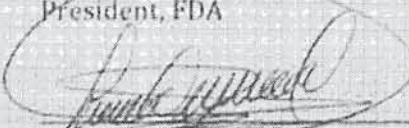
32. Governing law: This Agreement shall be governed by the law of Ontario, Canada. The courts of Ontario shall have exclusive jurisdiction to hear any claim or dispute related to this Agreement.

Dated: 24 August 2016


DATED: 24/08/2016

  
Carlos Guaman-Gaibor  
President, FDA

DATED: 24/08/2016

  
Brnel Gabriel Chávez Parra  
BOARD PRESIDENT, ECUADOR TRUST

DATED: \_\_\_\_\_

  
Solely as Trustee of Managing Member  
FUNFER and Not in an Individual Capacity

DATED: \_\_\_\_\_

\_\_\_\_\_  
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
All Instructions Acknowledged and Accepted



## APPENDIX 2

### **Ecuador Judgment Investment Agreement**

WHEREAS an Investment Agreement for the investment of \$300,000 to help fund the collection of the Ecuador Judgment against Chevron Corp. and/or its subsidiaries was agreed to August 24, 2016, by and between, on the one hand, the Frente de Defensa de la Amazonia ("FDA"), in its capacity as both the exclusive interest-holder of the 10% award made by the Ecuador Judgment under Ecuador's Environmental Management Law and the beneficiary of the environmental remediation award and related awards under the Ecuador Judgment and the Ecuador Trust, and the President of the Board of the Ecuador Trust, and on the other hand, the Funder, as set forth herein;

WITH REFERENCE TO that Investment Agreement, the following terms shall apply to its understanding and interpretation as if such terms were incorporated expressly into that Agreement and made a part thereof:

1. Funder means: WDIS Finance LLC.
2. U.S. Representative means: Steven R. Donziger  
245 W. 104th St., #7D  
New York, New York 10025.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Carlos Guaman Gaibor  
President, FDA

DATED: \_\_\_\_\_

\_\_\_\_\_  
Ermel Gabriel Chávez Parra  
BOARD PRESIDENT, ECUADOR TRUST

DATED: 9/12/16

W&A Solely as Trustee of Managing Member  
FUNDER and not in an Individual Capacity

DATED: \_\_\_\_\_

\_\_\_\_\_  
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
*All Instructions Acknowledged and Accepted*

## APPENDIX 2

### **Ecuador Judgment Investment Agreement**

WHEREAS an Investment Agreement for the investment of \$300,000 to help fund the collection of the Ecuador Judgment against Chevron Corp. and/or its subsidiaries was agreed to August 24, 2016, by and between, on the one hand, the Frente de Defensa de la Amazonia ("FDA"), in its capacity as both the exclusive interest-holder of the 10% award made by the Ecuador Judgment under Ecuador's Environmental Management Law and the beneficiary of the environmental remediation award and related awards under the Ecuador Judgment and the Ecuador Trust, and the President of the Board of the Ecuador Trust, and on the other hand, the Funder, as set forth herein;

WITH REFERENCE TO that Investment Agreement, the following terms shall apply to its understanding and interpretation as if such terms were incorporated expressly into that Agreement and made a part thereof:

1. Funder means: WDIS Finance LLC.
2. U.S. Representative means: Steven R. Donziger  
245 W. 104th St., #7D  
New York, New York 10025.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Carlos Guaman Gaibor  
President, FDA

DATED: \_\_\_\_\_

\_\_\_\_\_  
Ernel Gabriel Chávez Parra  
BOARD PRESIDENT, ECUADOR TRUST

DATED: \_\_\_\_\_

\_\_\_\_\_  
FUNDER

DATED: September 16,  
2016

\_\_\_\_\_  
*Alan Lenczner*

Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
*All Instructions Acknowledged and Accepted*

**APPENDIX 2**


**Ecuador Judgment Investment Agreement**

WHEREAS an Investment Agreement for the investment of \$300,000 to help fund the collection of the Ecuador Judgment against Chevron Corp. and/or its subsidiaries was agreed to August 24, 2016, by and between, on the one hand, the Frente de Defensa de la Amazonia ("FDA"), in its capacity as both the exclusive interest-holder of the 10% award made by the Ecuador Judgment under Ecuador's Environmental Management Law and the beneficiary of the environmental remediation award and related awards under the Ecuador Judgment and the Ecuador Trust, and the President of the Board of the Ecuador Trust, and on the other hand, the Funder, as set forth herein;

WITH REFERENCE TO that Investment Agreement, the following terms shall apply to its understanding and interpretation as if such terms were incorporated expressly into that Agreement and made a part thereof:

1. Funder means: WDIS Finance LLC.
2. U.S. Representative means: Steven R. Donziger  
245 W. 104th St., #7D  
New York, New York 10025.

DATED: 16-09-2016

  
\_\_\_\_\_  
Carlos Guaman Galbor  
President, FDA

DATED: 18-07-2016

  
\_\_\_\_\_  
Ernel Gabriel Chavez Parra  
BOARD PRESIDENT, ECUADOR TRUST

DATED: \_\_\_\_\_

\_\_\_\_\_  
FUNDER

DATED: \_\_\_\_\_

\_\_\_\_\_  
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
*All Instructions Acknowledged and Accepted*



**DISTRIBUTION APPENDIX**  
**(APPENDIX 3)**

This is Appendix 3 referred to in the **Ecuador Judgment Investment Agreement**, dated as of August 24, 2016 among the Funder (as identified in such agreement) to help fund the collection of the Ecuador Judgment (as defined in such agreement) against Chevron and/or its subsidiaries, by the Frente de Defensa de la Amazonia ("FDA"), in its capacity as both the exclusive interest-holder of the 10% award made by the Ecuador Judgment under Ecuador's Environmental Management Law and the beneficiary of the environmental remediation award and related awards under the Ecuador Judgment and the Ecuador Trust (defined in such agreement), together with the President of the Board of the Ecuador Trust (defined in such agreement). In accordance with and subject to the terms and of Section 4 of such agreement, the FDA identifies that it has previously allocated the following interests:

Name	Interest <sup>†</sup>
Funder I	0.125%
Funder II	0.050%
Funder IV	0.110%
Funder V	0.165%

<sup>†</sup> Percentage of Ecuador Judgment Gross Proceeds

DISTRIBUTION APPENDIX | APPENDIX 3

DATED: \_\_\_\_\_

\_\_\_\_\_  
Carlos Guaman Gaibor  
President, FDA

DATED: \_\_\_\_\_


\_\_\_\_\_  
Ermel Gabriel Chávez Parra  
President of the Board, ECUADOR TRUST

DATED: September 16,  
2016

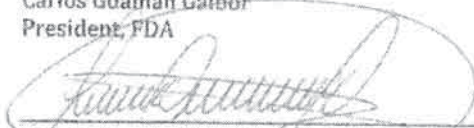
Alan Lenczner  
\_\_\_\_\_  
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
*Acknowledged and Accepted*

DISTRIBUTION APPENDIX | APPENDIX 3

DATED: 16-09-2016

  
Carlos Guaman Gaibor  
President, FDA

DATED: 16 09-2016

  
Ernel Gabriel Chavez Parra  
President of the Board, ECUADOR TRUST

DATED: \_\_\_\_\_

\_\_\_\_\_  
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
*Acknowledged and Accepted*

DISTRIBUTION APPENDIX | APPENDIX 3

DATED: \_\_\_\_\_

\_\_\_\_\_  
Carlos Guaman Galbor  
President, FDA

DATED: \_\_\_\_\_

\_\_\_\_\_  
Ermel Gabriel Chávez Parra  
President of the Board, ECUADOR TRUST

DATED: \_\_\_\_\_

*September 16,  
2016*

*Alan Lenczner*  
\_\_\_\_\_  
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
*Acknowledged and Accepted*

## APPENDIX 2


### **Ecuador Judgment Investment Agreement**

WHEREAS an Investment Agreement for the investment of \$300,000 to help fund the collection of the Ecuador Judgment against Chevron Corp. and/or its subsidiaries was agreed to August 24, 2016, by and between, on the one hand, the Frente de Defensa de la Amazonia ("FDA"), in its capacity as both the exclusive interest-holder of the 10% award made by the Ecuador Judgment under Ecuador's Environmental Management Law and the beneficiary of the environmental remediation award and related awards under the Ecuador Judgment and the Ecuador Trust, and the President of the Board of the Ecuador Trust, and on the other hand, the Funder, as set forth herein;

WITH REFERENCE TO that Investment Agreement, the following terms shall apply to its understanding and interpretation as if such terms were incorporated expressly into that Agreement and made a part thereof:

1. Funder means: WDIS Finance LLC.
2. U.S. Representative means: Steven R. Donziger  
245 W. 104th St., #7D  
New York, New York 10025.

DATED: 10-04-2016

  
\_\_\_\_\_  
Carlos Guaman Gaibor  
President, FDA

DATED: 10-09-2016

  
\_\_\_\_\_  
Ernel Gabriel Chavez Parra  
BOARD PRESIDENT, ECUADOR TRUST

DATED: \_\_\_\_\_

\_\_\_\_\_  
FUNDER

DATED: \_\_\_\_\_

\_\_\_\_\_  
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
*All Instructions Acknowledged and Accepted*

September 22, 2016


Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
130 Adelaide St. W  
Suite 2600  
Toronto, ON  
Canada M5H 3P5

Dear Alan,

Reference is made to the Ecuador Judgment Investment Agreement (the "Investment Agreement") from the Funder executing this letter, to help fund the collection of the Ecuador Judgment (as defined in such agreement) against Chevron and/or its subsidiaries by the Frente de DeFensa de la Amazonia.

This letter serves to memorialize our acknowledgment and agreement that notwithstanding paragraph 10 of the Investment Agreement, that your firm is not required to carry on its work on the enforcement of the Ecuador Judgment unless your firm is being paid to do so.

Sincerely,

  
Funder *Solely as Trustee  
of Managing Member  
of Funder*



DIRECTION

O: BEARD WINTER LLP

E: FUNDING ESCROW AGREEMENT dated August 25, 2016, made between WDIS Finance LLC and Beard Winter LLP (the "Funding Escrow Agreement")

The undersigned hereby directs BEARD WINTER LLP in its capacity as Escrow Agent under and pursuant to the Funding Escrow Agreement to hereby pay the sum of TWO HUNDRED AND EIGHTY-FIVE THOUSAND (\$285,000.00) DOLLARS U.S. to LENCZNER LAGHT ROYCE SMITH GRIFFIN LLP upon receipt of such funds that will be directed to the wire transfer coordinates as set forth below:

ROYAL BANK OF CANADA - U.S. ACCOUNT

Bank Address: 20 King Street West, Toronto, ON M5H 1C4  
Bank Number: 003  
Transit Number: 06012  
Account Number: 4006797  
Account Name: Beard Winter LLP  
Suite 701, 130 Adelaide Street West, Toronto, ON M5H 2K4  
ABA Number: 021 0000 21  
Swift Code: ROYCCAT2

DATED this \_\_\_\_\_ day of August, 2016.

WDIS FINANCE LLC

Per: 

Name: Michael Ben-Jacob

Title: Trustee of Managing Member

I have the authority to bind the above-referenced company



IN WITNESS WHEREOF the parties have executed this Funding Escrow Agreement.

WDIS FINANCE LLC

Per:

Name:

Title:

Michael Ben-Jacob

Trustee of Managing Member

I have the authority to bind the above-referenced company

BEARD WINTER LLP

By:

George D. Crossman  
Managing Partner



## **FUNDING ESCROW AGREEMENT**

Funding Escrow Agreement dated August 25, 2016, between WDIS Finance LLC (the "**Client**") and Beard Winter LLP (the "**Escrow Agent**").

### **RECITALS:**

- (a) Certain sums of monies (the "**Escrow Funds**") will be delivered to the Escrow Agent by the Client from time to time; and
- (b) The Escrow Agent has agreed to act as escrow agent for the purpose of holding and disbursing the Escrow Funds pursuant to the terms of this Funding Escrow Agreement and in accordance with the instructions from the Client.

In consideration of the foregoing and the mutual agreements contained herein (the receipt and adequacy of which are acknowledged), the parties agree as follows:

### **Section 2      Delivery of Escrow Funds**

The Client will deliver or cause to be delivered Escrow Funds from time to time to the Escrow Agent by way of certified cheque payable to the Escrow Agent or a wire transfer of immediately available funds to the Escrow Agent, which amount, together with all interest earned thereon as contemplated by Section 3, shall be held and dealt with by the Escrow Agent in accordance with terms of this Funding Escrow Agreement.

### **Section 3      Investment of Escrow Funds**

The Escrow Agent is hereby authorized and directed to cause the Escrow Funds to be invested and reinvested from time to time with the Royal Bank of Canada in an interest bearing instrument with a maturity of not more than thirty (30) days more or less. Interest earned and paid on such investments shall be added to and form part of the Escrow Funds and shall be invested and reinvested from time to time in accordance with this section. Interest earned on the Escrow Funds will be for the benefit of the Client.

### **Section 4      Purpose of the Escrow Funds**

The Escrow Funds are to be used to make an investment, to pay certain legal fees and other expenses that the Client has agreed to assume responsibility for and for such other purposes as the Client may direct in writing to the Escrow Agent. The Escrow Funds shall be released by the Escrow Agent only when the Client provides the Escrow Agent with a written Direction (as such term is defined below).

### **Section 5      Payment Notices, No Requirement to Act, Funds Received on Behalf of the Client**

- (1) At any time after the date hereof the Client shall be entitled to deliver a direction to the Escrow Agent substantially in the form attached hereto as Schedule "A" (a

"Direction") setting out what portion, if any, of the Escrow Funds are to be released and the name of the payee.

- (2) The Escrow Agent has the right not to act and will not be held liable for refusing to act unless it has received clear and reasonable documentation which complies with the terms of this Agreement. Such documentation must not require the exercise of any discretion or independent judgment on the part of the Escrow Agent.
- (3) Furthermore, the Escrow Agent agrees to hold in trust for the Client any amounts received for the benefit of the Client relative to the settlement of any legal proceedings. The Escrow Agent agrees to hold such funds in trust for the Client and shall release such funds as the Client may direct in writing to the Escrow Agent, provided first, that the Escrow Agent withholds from such funds any Canada Revenue Agency withholding tax obligations that would be the responsibility of the Client.

#### **Section 6      Duties and Liabilities of the Escrow Agent.**

- (1) The Escrow Agent shall have no duties or responsibilities other than those existing at law or under rules of professional responsibility and those expressly set forth in this Funding Escrow Agreement, which the parties agree are purely administrative in nature, and no implied duties or obligations shall be read into this Funding Escrow Agreement against the Escrow Agent. For greater certainty, the Escrow Agent is not bound by any agreement, arrangement or understanding relating to or arising out of the matters provided for in this Agreement, except as expressly set forth in this Agreement, and the Escrow Agent shall have no duty to enforce any obligation of any person, other than as provided herein.
- (2) The Escrow Agent shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith, and in the exercise of its own best judgment, and shall not be held liable for any error in judgment made in good faith, unless it shall be proved that the Escrow Agent was grossly negligent in ascertaining the pertinent facts or acted intentionally in bad faith.
- (3) The Escrow Agent may rely, and shall be protected in acting, upon any judgment, order, notice, demand, direction, certificate, or other instrument, paper or document which may be submitted to it in connection with its duties hereunder and the directions incorporated therein and which is believed by the Escrow Agent to be genuine and signed or presented by the proper person(s), and may accept the same as sufficient evidence of the facts stated therein. The Escrow Agent shall in no way be bound to enquire as to the veracity, accuracy or adequacy thereof or call for further evidence (whether as to due execution, validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so.



- (4) In the event that the Escrow Agent shall become involved in any arbitration or litigation relating to the Escrow Funds, the Escrow Agent is authorized to comply with any decision reached through such arbitration or litigation.
- (5) In the following circumstances, the Escrow Agent may (i) refrain from taking any action under this Agreement until it is authorized or directed otherwise in writing by the Client, or by an order of a court of competent jurisdiction from which no further appeal may be taken or (ii) deposit the Escrow Funds with a court of competent jurisdiction in the City of Toronto, in the Province of Ontario:
  - (a) The Escrow Agent is uncertain as to its duties or rights hereunder,
  - (b) The Escrow Agent receives instructions, claims or demands from the Client or from a third person with respect to any matter arising pursuant to this Funding Escrow Agreement which, in its opinion, are in conflict with any provision of this Funding Escrow Agreement, or
  - (c) The parties to this Agreement disagree about the interpretation of this Agreement or about the rights and obligations of the Escrow Agent or the propriety of an action contemplated by the Escrow Agent under this Agreement.
- (6) Upon the Escrow Agent depositing the Escrow Funds with a court in accordance with Section 6(5), the Escrow Agent will be released from its duties and obligations under this Agreement. Section 7 and Section 8 and the provisions of this Agreement relating to the protection of the Escrow Agent survive such release of the Escrow Agent.

#### **Section 7 Escrow Agent's Fees, Costs and Expenses**

The Client agrees to pay, upon request, the reasonable fees, expenses and disbursements incurred by the Escrow Agent in connection with the performance of its obligations hereunder.

#### **Section 8 Indemnification of Escrow Agent**

The Client hereby indemnifies and save harmless the Escrow Agent at all times against all actions, proceedings, losses, liabilities, costs, claims and demands incurred or sustained by the Escrow Agent in respect of any matter or thing done by it under, pursuant to or in connection with this Funding Escrow Agreement, or otherwise arising in connection with its office as Escrow Agent hereunder, except in so far as the same arose through the gross negligence or wilful misconduct on the part of the Escrow Agent or otherwise arose from any breach by it of its obligations under this Funding Escrow Agreement. Without limiting the generality of the foregoing, the Client will indemnify and save harmless the Escrow Agent against all legal or other fees arising out of or in connection with its entering into this Funding Escrow Agreement and carrying out its duties hereunder, including without limitation the costs and expenses of defending itself against any claim of liability or any

action for interpleader. This indemnity shall survive the termination or discharge of this Funding Escrow Agreement or the resignation of the Escrow Agent.

#### **Section 9      Resignation, Removal of Escrow Agent**

- (1) The Escrow Agent may resign its trust and be discharged from all further duties and liabilities hereunder after giving thirty (30) days' written notice to the Client or such shorter notice as the Client may accept as sufficient, and may be removed from its office as such Escrow Agent by the Client at any time by not less than five (5) business days' written notice given to the Escrow Agent. Upon discharge or removal, the Escrow Agent shall deliver the Escrow Funds and all interest accrued thereon, subject to any Canada Revenue Agency withholding obligations, by certified cheque or a wire transfer as directed by the Client.
- (2) In the event of the resignation of the Escrow Agent or its removal from office, the Client shall appoint a successor.
- (3) The Escrow Agent which resigns or is removed shall execute such further assurances or documents as, in the opinion of the Escrow Agent and the Client, may be necessary or desirable to vest in the new Escrow Agent the same powers, rights, duties and responsibilities as if the new Escrow Agent had been originally named as Escrow Agent.

#### **Section 10     Termination of Funding Escrow Agreement**

This Funding Escrow Agreement shall terminate and cease to be of any further force and effect (except for the provisions of this Funding Escrow Agreement relating to protection of the Escrow Agent which shall survive any termination of this Funding Escrow Agreement) on the date on which the Escrow Agent shall have disbursed the Escrow Funds in full in accordance with the provisions of this Funding Escrow Agreement.

#### **Section 11     Determination**

The parties hereto agree that the Escrow Agent shall not be required to make any determination or decision with respect to the validity of any claim made by any party, or of any denial thereof, but shall be entitled to rely conclusively on the terms hereof and the documents tendered to it in accordance with the terms hereof.

#### **Section 12     Solicitor/Client Relationship**

The Escrow Agent and the Client acknowledge that a solicitor/client relationship exists. As such, the Escrow Agent agrees to keep in confidence all information made available to it by the Client. Furthermore, it is understood that the Escrow Agent will provide legal advice to the Client from time to time in connection with matters that are the subject of this Funding Escrow Agreement.

#### **Section 13     Notices**

Any notice, direction or other communication to be given under this Funding Escrow Agreement shall be in writing and given by delivering it or sending it by facsimile, e-mail or other similar form of recorded communication addressed:



(a) If to the Escrow Agent, to:

Beard Winter LLP  
Suite 701 - 130 Adelaide Street West  
Toronto, ON M5H 3V1

Attention: George D. Crossman  
Facsimile: 416-593-7760  
E-mail: crossman@beardwinter.com

(b) If to the Client, to:

WDIS Finance LLC  
c/o Michael Ben-Jacob  
Kaye Scholer LLP  
New York, NY 10019

Facsimile: 212-836-8565  
E-mail: Michael.Ben-Jacob@kayescholer.com

A Notice is deemed to be given and received (i) if sent by personal delivery or same day courier, on the date of delivery if it is a business day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next business day, (ii) if sent by overnight courier, on the next business day, or (iii) if sent by facsimile or e-mail, on the business day following the date of confirmation of transmission by the originating facsimile or e-mail. A party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the party at its changed address. Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed.

**Section 14 Entire Agreement**

This Funding Escrow Agreement sets forth the entire agreement among the parties hereto with respect to the matters contained herein.

**Section 15 Enurement and Assignment**

This Funding Escrow Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**Section 16 Severability**

If any provision of this Funding Escrow Agreement is deemed by any court of competent jurisdiction to be invalid or void, the remaining provisions shall remain in full force and effect.

**Section 17 Waiver**

No failure or delay of the Escrow Agent in exercising any right, power or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power or remedy preclude any other or further exercise of any right, power or remedy.

**Section 18 Further Assurance**

Each party shall, at the request of the other party, deliver to the requesting party all further documents or other assurances as may reasonably be necessary or desirable to give effect to this Funding Escrow Agreement.

**Section 19 Time**

Time shall be of the essence in respect of this Funding Escrow Agreement.

**Section 20 Governing Law**

This Funding Escrow Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**Section 21 Counterparts**

This Funding Escrow Agreement may be executed in several counterparts, each of which so executed shall be deemed an original, and all of which shall constitute one and the same instrument.

*[Remainder of this page intentionally left blank]*

**IN WITNESS WHEREOF** the parties have executed this Funding Escrow Agreement.

**WDIS FINANCE LLC**

Per: \_\_\_\_\_

Name:

Title:

I have the authority to bind the above-referenced company

**BEARD WINTER LLP**

By: \_\_\_\_\_

George D. Crossman  
Managing Partner



IN WITNESS WHEREOF the parties have executed this Funding Escrow Agreement.

**WDIS FINANCE LLC**

Per:

Name:

Title:

*Michael Ben-Jacob*  
*Trustee of Managing Member*

I have the authority to bind the above-referenced company.

**BEARD WINTER LLP**

By:

*George D. Crossman*  
*Managing Partner*



DIRECTION

O: BEARD WINTER LLP

E: FUNDING ESCROW AGREEMENT dated August 25, 2016, made between WDIS Finance LLC and Beard Winter LLP (the "Funding Escrow Agreement")

The undersigned hereby directs BEARD WINTER LLP in its capacity as Escrow Agent under and pursuant to the Funding Escrow Agreement to hereby pay the sum of TWO HUNDRED AND EIGHTY-FIVE THOUSAND (\$285,000.00) DOLLARS U.S. to LENCZNER LAGHT ROYCE SMITH GRIFFIN LLP upon receipt of such funds that will be directed to the wire transfer coordinates as set forth below:

ROYAL BANK OF CANADA - U.S. ACCOUNT

Bank Address: 20 King Street West, Toronto, ON M5H 1C4  
Bank Number: 003  
Transit Number: 06012  
Account Number: 4006797  
Account Name: Beard Winter LLP  
Suite 701, 130 Adelaide Street West, Toronto, ON M5H 2K4  
ABA Number: 021 0000 21  
Swift Code: ROYCCAT2

DATED this \_\_\_\_\_ day of August, 2016.

WDIS FINANCE LLC

Per: 

Name: Michael Ben-Jacob

Title: Trustee of Managing Member

I have the authority to bind the above-referenced company



September 22, 2016


Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
130 Adelaide St. W  
Suite 2600  
Toronto, ON  
Canada M5H 3P5

Dear Alan,

Reference is made to the Ecuador Judgment Investment Agreement (the "Investment Agreement") from the Funder executing this letter, to help fund the collection of the Ecuador Judgment (as defined in such agreement) against Chevron and/or its subsidiaries by the Frente de DeFensa de la Amazonia.

This letter serves to memorialize our acknowledgment and agreement that notwithstanding paragraph 10 of the Investment Agreement, that your firm is not required to carry on its work on the enforcement of the Ecuador Judgment unless your firm is being paid to do so.

Sincerely,

  
Funder *Solely as Trustee  
of Managing Member  
of Funder*

# EXHIBIT 7

**Ecuador Judgment Investment Agreement**

This Agreement is effective as of August 24, 2016. In consideration of an Investment of \$200,000 from the Funder (defined below) to help fund the collection of the Ecuador Judgment (defined below) against Chevron and/or its subsidiaries ("Chevron"), the Frente de Defensa de la Amazonia ("FDA"), in its capacity as both the exclusive interest-holder of the 10% award made by the Ecuador Judgment under Ecuador's Environmental Management Law ("the 10% Award") and the beneficiary of the environmental remediation award and related awards under the Ecuador Judgment and the Ecuador Trust (defined below), together with the President of the Board of the Ecuador Trust (defined below), and the Funder, hereby agree as follows:

**1. Definitions:**

- a. Ecuador Judgment: The final judgment and award in the case of *Maria Aguinda et al. v. Chevron Corp.*, rendered in the first instance by the Provincial Court of Justice of Sucumbios, 14 Feb. 2011, affirmed on appeal by the Sole Chamber of the Provincial Court of Justice of Sucumbios, 3 Jan. 2012, certified for enforcement on 17 Feb. 2012, and affirmed by the National Court of Justice, 12 Nov. 2013. "Ecuador Judgment" in this Agreement refers to the legal obligation imposed on Chevron by the Ecuadorian courts as reflected in the aforementioned decisions (attached in Appendix 1) collectively.
- b. Ecuador Trust: "FIDEICOMISO MERCANTIL DE ADMINISTRACIÓN DE FLUJOS ADAT," created 1 March 2012 in Quito, Ecuador, pursuant to instructions in the Ecuador Judgments, in which the individual claimants in the *Aguinda* case placed the entirety of their interest in trust for the implementation of remediation and payment of related expenses, naming the Frente de Defensa de la Amazonia (FDA) as the sole beneficiary. Attached in Appendix 1.

**2. Parties and Agents:**


- a. "FDA": Frente de Defensa de la Amazonía
- b. "Trust Board President": Mr. Ermel Gabriel Chávez Parra, duly appointed President of the Board of the Ecuador Trust.
- c. "Ecuador Parties": The FDA and the Trust Board President.
- d. "Canadian Counsel": Lenczner Slaght Royce Smith Griffin LLP.
- e. "Funder": As identified in Appendix 2, in the possession of Canadian Counsel.
- f. "U.S. Representative": As identified in Appendix 2, in the possession of Canadian Counsel.

**3. Grant of Interest:**



- a. Grant: The FDA and the Trust President hereby grant the Funder an Interest ("Funder's Interest") of 0.110% of the total amount of the Ecuador Judgment and the Ecuador Judgment Gross Proceeds (defined below) as further set forth herein.
- b. Definition of Ecuador Judgment Gross Proceeds: "Ecuador Judgment Gross Proceeds" means the total amount of any and all funds actually collected by the Ecuador Parties or any of their agents or related parties related to the Ecuador Judgment, including, without limitation, any settlement monies paid by Chevron; any judicial orders obtained by claimants against Chevron that result in the recovery of funds, non-monetary assets, or anything of value; the 10% Award to the FDA; any post-judgment interest payments or penalties awarded by the Canadian courts or any court, and any additional award of fees or expenses by the Ecuadorian, Canadian, or any other court. Ecuador Judgment Gross Proceeds includes, without limitation, any interest payments on the pending judgment, fees, penalties, and the 10% Award.
4. Ecuador Parties' Guarantee of Obligations: The FDA warrants that it is the sole beneficiary of the Ecuador Judgment in trust and FDA hereby irrevocably warrants that the Funder is legally entitled to receive, and will receive, its Interest in accordance with this Agreement. Other than the Parties to this Agreement, as defined above, the Funder will have no obligations to third parties. Notwithstanding that the Ecuador Parties acknowledge that over the course of the litigation against Chevron, they have entered into various contracts with funders, lawyers, and other service providers (including the Priority Existing Equity Holders identified by the Ecuador Parties in Appendix 3 to this Agreement and the Distribution Escrow Agreement), which also provide a grant of interest in the Ecuador Judgment Gross Proceeds, the Ecuador Parties guarantee to the Funder that the Funder's Interest does not infringe directly and/or indirectly on those contracts and that its Interest will absolutely be honored out of the Gross Proceeds recovered.
5. Co-ownership of Ecuador Judgment: As per this Agreement, the Funder will be a co-owner of the Ecuador Judgment up to the amount of his Interest in the Judgment. The Funder will not have the independent power to enforce his ownership Interest against Chevron or its subsidiaries. The Ecuador Parties, together with the *Aguinda* claimants and the communities affected by Chevron's contamination, retain ultimate authority over settlement and disposition of the dispute.
6. Investment Deemed to be Made: Once Funder transfers and clears the full amount of the investment to the Funding Escrow Account, the investment will have been deemed to be made and the Funder will be absolutely and irrevocably entitled to the Funder's Interest as defined above and will immediately become the co-owner of the Ecuador Judgment as also defined above, subject only to the conditions and limitations outlined herein.
7. Agreements of Ecuador Parties: The Ecuador Parties hereby agree with Funder as follows:
- a. Settlement Process: The FDA will lead the establishment of a Settlement Oversight Committee to facilitate and advise on any settlement opportunities.

Members will include Canadian Counsel, two representatives appointed by the FDA, and the U.S. Representative.

- b. Additional Representations: The Ecuador Parties hereby represent, warrant and confirm that:
- i. they have (A) full power and authority to enter into and perform their obligations under this Agreement, (B) duly authorised the execution, delivery and performance of their obligations under this Agreement, and (C) obtained all necessary registrations, consents and approvals related to their execution, delivery and performance of their obligations under this Agreement;
  - ii. the execution and the delivery of this Agreement does not in any way contravene any laws, rulings, or public policies whether in Ecuador or Canada, nor contravene any of the Ecuador Parties' constituent or other governing documents or another contracts, commitments, or obligations of the Ecuador Parties or their affiliates or representatives (on their behalf) with any third parties; and
- c. The Ecuador Parties agree and confirm that upon the receipt of the Ecuador Judgment Gross Proceeds the Funder will be entitled to and will receive promptly the Funder's Interest in accordance with the "Grant of Interest" provision of this Agreement.
- d. Escrow Agent Provisions:
- i. The Ecuador Parties irrevocably authorize Canadian Counsel to be the Exclusive Distribution Escrow Agent to collect any of the Ecuador Judgment Gross Proceeds and to distribute said proceeds in accordance with this Agreement.
  - ii. Canadian Counsel hereby confirms that the execution and the delivery of this Agreement does not contravene any laws, rulings and public policies in Canada.
  - iii. The Canadian Counsel confirms, as the Exclusive Distribution Escrow Agent, that upon collection of any of the Ecuador Judgment Gross Proceeds, the Funder will receive the Funder's Interest in accordance with this Agreement and in accordance with the Distribution Escrow Agreement (defined below) that shall be approved and executed by the Funder and the Ecuador Parties no later than three (3) weeks from the Notice to Fund.
8. Conditions to Requirement to Transfer Funds: The investment will be in the amount of \$200,000. The Funder shall cause an amount equal to \$200,000 in connection with this Agreement to be paid to Canadian Counsel to hold in escrow until use pursuant to paragraph 12 of this Agreement. The transfer of the investment by the Funder is subject to: (i) the Notice to Fund; (ii) delivery of a certificate by the Ecuador Parties certifying that
- 



this Agreement has been approved by the FDA Executive Committee the Trust, and each other governing body of an Ecuador Party and that all other representations and warranties made by the Ecuador Parties made in or incorporated into this Agreement remain true, correct and complete as of the date of the funding; and (iii) confirmation given by Canadian Counsel as articulated in this Agreement.

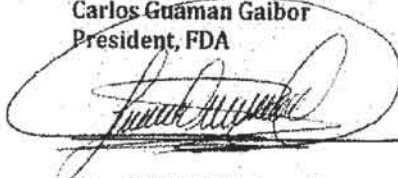
9. Escrow Accounts: Two escrow accounts will be created by Canadian Counsel, as follows:
  - a. The first escrow account ("Funding Escrow Account") will be created by Canadian Counsel to hold investment monies transferred under this Agreement in escrow to be distributed per the instructions of the U.S. Representative, the Funder, and a representative to be appointed by the FDA. Upon due consultation, final authority over distribution of said funds will rest with the U.S. Representative.
  - b. The second escrow account ("Distribution Escrow Account") will be created by Canadian Counsel to collect the Ecuador Judgment Gross Proceeds and distribute said proceeds to satisfy the Funder's Interest and other equity holders as set forth above and then distribute funds to the Ecuador Trust for environmental remediation and/or to otherwise implement the remediation ordered by the Ecuador Judgment.
10. No Further Funding Requirement: Canadian Counsel, the Ecuador Parties, and the US Representative hereby confirm to the Funder that upon the Investment being made, under no circumstances, will there be a requirement for further funding from the Funder in order to conclude all of the procedures in Canada related to the enforcement of the Ecuador Judgment and the collection of the Ecuador Judgment Gross Proceeds.
11. Use of funds: From time to time, and in order to determine how the Investment will be spent, a budget shall be agreed upon and approved by the US Representative and the Funder, with the US Representative having final authority in the event of a conflict. The Investment shall be used to fund litigation and other expenses dedicated to securing collection of the Ecuador Judgment in Canada and other jurisdictions as may be determined.
12. Obligations of the Funder: Once the Funder has made its investment, the Funder will be under no other obligation whatsoever as per this Agreement.
13. No Dilution: The Funder will not be subject to any dilution of Funder's Interest as defined above.
14. No responsibility for environmental remediation: The Funder will have no responsibility whatsoever for environmental remediation in the area of Ecuador affected by the Ecuador Judgment.
15. Obligations towards the Funder: The Ecuador Parties hereby irrevocably warrant that all obligations towards the Funder will be satisfied in accordance with this Agreement and the Distribution Escrow Agreement prior to any distributions to the Ecuador Parties, the Ecuador Trust, or any Claimants, based on its Interest in the total amount collected from

DATED: 24/08/2016



Carlos Guaman Gaibor  
President, FDA

DATED: 29/08/2016



Ermel Gabriel Chávez Parra  
BOARD PRESIDENT, ECUADOR TRUST

DATED: \_\_\_\_\_


FUNDER

DATED: \_\_\_\_\_

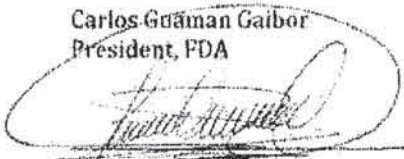
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
*All Instructions Acknowledged and Accepted*



DATED: 24/08/2016

  
\_\_\_\_\_  
Carlos Guaman Gaibor  
President, FDA


DATED: 24/08/2016

  
\_\_\_\_\_  
Ernel Gabriel Chávez Parra  
BOARD PRESIDENT, ECUADOR TRUST

DATED: \_\_\_\_\_

FUNDER

DATED: 11/20/2016

  
\_\_\_\_\_  
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
*All Instructions Acknowledged and Accepted*

DATED: 9/14/08/2016

Carlos Guzman

Carlos Guzman Galbor  
President, FDA

DATED: 24/00/2016

Ermel Gabriel Chávez Parra

Ermel Gabriel Chávez Parra  
BOARD PRESIDENT, ECUADOR TRUST

DATED: 10-7-16

Jay Blalock Manager  
FUNDER WELLS FARGO PARTNERS, LLC



**SIGN  
HERE**

DATED: \_\_\_\_\_

Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
All Instructions Acknowledged and Accepted

# EXHIBIT 8

## **Ecuador Judgment Investment Agreement**

In consideration of an investment of \$250,000 from the Funder (defined below) to help fund the collection of the Ecuador Judgment (defined below) against Chevron and/or its subsidiaries ("Chevron"), the Frente de Defensa de la Amazonia ("FDA"), in its capacity as both the exclusive interest-holder of the 10% award made by the Ecuador Judgment under Ecuador's Environmental Management Law ("the 10% Award") and the beneficiary of the environmental remediation award and related awards under the Ecuador Judgment and the Ecuador Trust (defined below), together with the President of the Board of the Ecuador Trust (defined below), and the Funder, hereby agree as follows:

### **1. Definitions:**

- a. Ecuador Judgment: The final judgment and award in the case of *Maria Aguinda et al. v. Chevron Corp.*, rendered in the first instance by the Provincial Court of Justice of Sucumbios, 14 Feb. 2011, affirmed on appeal by the Sole Chamber of the Provincial Court of Justice of Sucumbios, 3 Jan. 2012, certified for enforcement on 17 Feb. 2012, and affirmed by the National Court of Justice, 12 Nov. 2013. "Ecuador Judgment" in this Agreement refers to the legal obligation imposed on Chevron by the Ecuadorian courts as reflected in the aforementioned decisions (attached in Appendix 1) collectively.
- b. Ecuador Trust: "FIDEICOMISO MERCANTIL DE ADMINISTRACIÓN DE FLUJOS ADAT," created 1 March 2012 in Quito, Ecuador, pursuant to instructions in the Ecuador Judgments, in which the individual claimants in the *Aguinda* case placed the entirety of their interest in trust for the implementation of remediation and payment of related expenses, naming the Frente de Defensa de la Amazonia (FDA) as the sole beneficiary. Attached in Appendix 1.

### **2. Parties and Agents:**

- a. "FDA": Frente de Defensa de la Amazonia
- b. "Trust Board President": Mr. Ermel Gabriel Chávez Parra, duly appointed President of the Board of the Ecuador Trust.
- c. "Ecuador Parties": The FDA and the Trust Board President.
- d. "Canadian Counsel": Lenczner Slaght Royce Smith Griffin LLP.
- e. "Funder": As identified in Appendix 2, in the possession of Canadian Counsel.
- f. "Funding Escrow Agent": Beard Winter LLP
- g. "U.S. Representative": As identified in Appendix 2, in the possession of Canadian Counsel.



3. Grant of Interest:

- a. Grant: The FDA and the Trust President hereby grant the Funder an Interest ("Funder's Interest") of 0.1375% of the total amount of the Ecuador Judgment and the Ecuador Judgment Gross Proceeds (defined below) as further set forth herein.
  - b. Definition of Ecuador Judgment Gross Proceeds: "Ecuador Judgment Gross Proceeds" means the total amount of any and all funds actually collected by the Ecuador Parties or any of their agents or related parties related to the Ecuador Judgment, including, without limitation, any settlement monies paid by Chevron; any judicial orders obtained by claimants against Chevron that result in the recovery of funds, non-monetary assets, or anything of value; the 10% Award to the FDA; any post-judgment interest payments or penalties awarded by the Canadian courts or any court, and any additional award of fees or expenses by the Ecuadorian, Canadian, or any other court. Ecuador Judgment Gross Proceeds includes, without limitation, any interest payments on the pending judgment, fees, penalties, and the 10% Award.
4. Ecuador Parties' Guarantee of Obligations: The FDA warrants that it is the sole beneficiary of the Ecuador Judgment in trust and FDA hereby irrevocably warrants that the Funder is legally entitled to receive, and will receive, its interest in accordance with this Agreement. Other than the Parties to this Agreement, as defined above, the Funder will have no obligations to third parties. Notwithstanding that the Ecuador Parties acknowledge that over the course of the litigation against Chevron, they have entered into various contracts with funders, lawyers, and other service providers (including the Priority Existing Equity Holders identified by the Ecuador Parties in Appendix 3 to this Agreement and the Distribution Escrow Agreement), which also provide a grant of interest in the Ecuador Judgment Gross Proceeds, the Ecuador Parties guarantee to the Funder that the Funder's Interest does not infringe directly and/or indirectly on those contracts and that its Interest will absolutely be honored out of the Gross Proceeds recovered.
5. Co-ownership of Ecuador Judgment: As per this Agreement, the Funder will be a co-owner of the Ecuador Judgment up to the amount of his Interest in the judgment. The Funder will not have the independent power to enforce his ownership Interest against Chevron or its subsidiaries. The Ecuador Parties, together with the *Aguinda* claimants and the communities affected by Chevron's contamination, retain ultimate authority over settlement and disposition of the dispute.
6. Investment Deemed to be Made: Once Funder transfers and clears the full amount of the investment to the Funding Escrow Account, the investment will have been deemed to be made and the Funder will be absolutely and irrevocably entitled to the Funder's Interest as defined above and will immediately become the co-owner of the Ecuador Judgment as also defined above, subject only to the conditions and limitations outlined herein.
7. Agreements of Ecuador Parties: The Ecuador Parties hereby agree with Funder as follows:

- a. Settlement Process: The FDA will lead the establishment of a Settlement Oversight Committee to facilitate and advise on any settlement opportunities. Members will include Canadian Counsel, two representatives appointed by the FDA, and the U.S. Representative.
- b. Additional Representations: The Ecuador Parties hereby represent, warrant and confirm that:
  - i. they have (A) full power and authority to enter into and perform their obligations under this Agreement, (B) duly authorised the execution, delivery and performance of their obligations under this Agreement, and (C) obtained all necessary registrations, consents and approvals related to their execution, delivery and performance of their obligations under this Agreement;
  - ii. the execution and the delivery of this Agreement does not in any way contravene any laws, rulings, or public policies whether in Ecuador or Canada, nor contravene any of the Ecuador Parties' constituent or other governing documents or another contracts, commitments, or obligations of the Ecuador Parties or their affiliates or representatives (on their behalf) with any third parties; and
  - iii. the Ecuador Parties make to the Funder each of the representations and warranties set forth in clauses 10.2(a) through and including (p) of the Funding Agreement between Treca Financial Solutions, the FDA and the Claimants (as defined therein), in the form delivered by FDA to Funder, as if such representations and warranties were incorporated into this Agreement and made a part hereof and were made to Funder *mutatis mutandis* with application to this Agreement and the obligations of the Ecuador Parties and the transactions contemplated by this Agreement.
- c. The Ecuador Parties agree and confirm that upon the receipt of the Ecuador Judgment Gross Proceeds the Funder will be entitled to and will receive promptly the Funder's interest in accordance with the "Grant of Interest" provision of this Agreement.
- d. Escrow Agent Provisions:
  - i. The Ecuador Parties irrevocably authorize Canadian Counsel to be the Exclusive Distribution Escrow Agent to collect any of the Ecuador Judgment Gross Proceeds and to distribute said proceeds in accordance with this Agreement.
  - ii. Canadian Counsel hereby confirms that the execution and the delivery of this Agreement does not contravene any laws, rulings and public policies in Canada.
  - iii. The Canadian Counsel confirms, as the Exclusive Distribution Escrow Agent, that upon collection of any of the Ecuador Judgment Gross Proceeds, the Funder



will receive the Funder's Interest in accordance with this Agreement and in accordance with the Distribution Escrow Agreement (defined below) that shall be approved and executed by the Funder and the Ecuador Parties no later than three (3) weeks from the Notice to Fund.

8. Conditions to Requirement to Transfer Funds: The investment will be in the amount of \$250,000. In satisfaction of the investment amount, the Funder shall cause an amount equal to \$250,000 less up to \$12,500 for legal fees in connection with this Agreement and advice related to the transactions contemplated hereby, to be paid to Funding Escrow Agent. The transfer of the investment by the Funder is subject to: (i) the Notice to Fund; (ii) delivery of a certificate by the Ecuador Parties certifying that this Agreement has been approved by the FDA Executive Committee the Trust, and each other governing body of an Ecuador Party and that all other representations and warranties made by the Ecuador Parties made in or incorporated into this Agreement remain true, correct and complete as of the date of the funding; (iii) the approval and execution of the Funding Escrow Agreement by the Funding Escrow Agent and all the relevant parties and stakeholders sufficient for the establishment of the Funding Escrow Account set forth below; and (iv) confirmation given by Canadian Counsel as articulated in this Agreement.
9. Escrow Accounts: Two escrow accounts will be created by Canadian Counsel, as follows:
  - a. The first escrow account ("Funding Escrow Account") will be created by the Funding Escrow Agent to hold investment monies transferred under this Agreement in escrow to be distributed per the instructions of the U.S. Representative, the Funder, and a representative to be appointed by the FDA. Upon due consultation, final authority over distribution of said funds will rest with the U.S. Representative.
  - b. The second escrow account ("Distribution Escrow Account") will be created by Canadian Counsel to collect the Ecuador Judgment Gross Proceeds and distribute said proceeds to satisfy the Funder's Interest and other equity holders as set forth above and then distribute funds to the Ecuador Trust for environmental remediation and/or to otherwise implement the remediation ordered by the Ecuador Judgment.
10. No Further Funding Requirement: Canadian Counsel, the Ecuador Parties, and the US Representative hereby confirm to the Funder that upon the investment being made, under no circumstances, will there be a requirement for further funding from the Funder in order to conclude all of the procedures in Canada related to the enforcement of the Ecuador judgment and the collection of the Ecuador Judgment Gross Proceeds.
11. Use of funds: From time to time, and in order to determine how the Investment will be spent, a budget shall be agreed upon and approved by the US Representative and the Funder, with the US Representative having final authority in the event of a conflict. The Investment shall be used to fund litigation and other expenses dedicated to securing collection of the Ecuador Judgment in Canada and other jurisdictions as may be determined.

12. Obligations of the Funder: Once the Funder has made its investment, the Funder will be under no other obligation whatsoever as per this Agreement.
13. No Dilution: The Funder will not be subject to any dilution of Funder's interest as defined above.
14. No responsibility for environmental remediation: The Funder will have no responsibility whatsoever for environmental remediation in the area of Ecuador affected by the Ecuador judgment.
15. Obligations towards the Funder: The Ecuador Parties hereby irrevocably warrant that all obligations towards the Funder will be satisfied in accordance with this Agreement and the Distribution Escrow Agreement prior to any distributions to the Ecuador Parties, the Ecuador Trust, or any Claimants, based on its interest in the total amount collected from the Ecuador judgment Gross Proceeds by the Canadian Counsel or any other Counsel for and on behalf of the Ecuador Parties anywhere in the world.
16. Partial Recovery in Non-Settlement Scenario: To the extent the collection of funds from the Ecuador judgment takes place without a settlement and on a partial or incremental basis, the Ecuador Parties hereby irrevocably warrant that the Funder (along with other Priority Existing Equity Holders as listed in Appendix 3) will be compensated a percentage of funds corresponding to their respective interests assuming a full recovery, prior to any payments to the Ecuador Parties or any other party or stake-holder receiving any interest with respect to such funds. Such payments shall be made forthwith upon receipt of any funds recovered under the terms of this Agreement.
17. Collection of Judgment Funds Outside Canada: Should any part of the Ecuador judgment Gross Proceeds be collected from Chevron from any jurisdiction outside Canada, Canadian Counsel as the Exclusive Distribution Escrow Agent will collect and distribute any such funds to the Funder and any Priority Existing Equity Holders as listed in Appendix 3 in accordance with their respective interests and in accordance with the Distribution Escrow Agreement.
18. Obligations of the FDA: The FDA hereby irrevocably warrants that the full amount of its 10% award due under the judgment against Chevron plus any interest on the judgment collected in any enforcement jurisdiction, shall be used to guarantee full payment to the Funder and any Priority Existing Equity Holders as listed in Appendix 3 until all have fully received their interests as per this Agreement and others referenced in the Appendix.
19. Obligations of Canadian Counsel: Canadian Counsel hereby accepts irrevocable instructions to adhere to all of the terms of this Agreement and will abide by those instructions.
20. Binding and Irrevocable Authority of the FDA: The signatory of the FDA to this Agreement (upon ratification of the FDA Executive Committee) affirms he has the authority to bind the organization.




21. Instructions: The FDA and its representatives will, in a timely fashion and as frequently as necessary, instruct the Canadian Counsel in Canada and other Counsels elsewhere involved in the collection of the Ecuador Judgment of the obligations under this Agreement, so that its terms will be effectuated forthwith upon collection of any funds under the Ecuador Judgment. In any event, the Ecuador Parties agree that any payments due to the Funder from any recovery under the Ecuador Judgment will be transferred in full within one week of the final receipt of any funds in accordance with this Agreement and the Distribution Escrow Agreement.
22. Information: Investor will be kept apprised on a regular basis of all material developments in the litigation and shall provide all documents or other's information as are reasonably requested by Funder.
23. Common Legal Interest: The FDA, Trust and Funder have a "common legal interest" in the Claim, this Agreement and any discussion, evaluation and negotiation or other communications and exchanges of information relating thereto.
24. Counterparts: This Agreement may be signed in multiple counterparts. Each counterpart shall be considered an original instrument, but all of them in the aggregate shall constitute one Agreement.
25. Confidentiality: The Parties agree that the details of this Agreement, and all related communications, will be kept confidential as between the Parties and will not be divulged to third Parties.
26. Conflict of Languages: To the extent there is a conflict between the English and Spanish versions of this Agreement, the English version shall apply.
27. Assignment: This Agreement shall inure to the benefit of, and shall be binding upon the parties hereto and their respective assignees, transferees and successors-in-title or interest. References to the parties include their assignees, transferees and successors-in-title or interest, and shall include both corporate and unincorporated associations, partnerships, and individuals. Neither this Agreement, nor any rights, interests, obligations and duties arising hereunder may be assigned or conveyed; provided, however, that nothing in this agreement can be construed to block the Funder from assigning all or part of his interest to a member of his immediate family, or to a trust, pension plan or other entity for the benefit of the Funder or one or more individuals in his immediate family.
28. Severability & Invalidity: If any term or provision in this Agreement will in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement will not be affected.
29. Other Third-party commitments: The Parties warrant to each other that the execution and the delivery of this Agreement are not against any commitments, contracts and / or other obligations that they have with other third Parties.

30. Authority: Canadian Counsel confirms that the Ecuador Parties have the authority to enter into this Agreement and that it is binding and enforceable against them.
31. Entire Agreement: This Agreement shall constitute the entire agreement between the parties hereto, and shall supersede all prior agreements, understandings and negotiations between the parties with respect to the subject matter of this Agreement.
32. Governing law: This Agreement shall be governed by the law of Ontario, Canada. The courts of Ontario shall have exclusive jurisdiction to hear any claim or dispute related to this Agreement.

Dated: 2016

DATED: \_\_\_\_\_

  
Carlos Guaman Galbor  
President, FDA


DATED: \_\_\_\_\_

  
Ernest Estrada  
BOARD PRESIDENT, ECUADOR TRUST

DATED: \_\_\_\_\_

   
FUNDEN Director - Director  
in behalf of Funder

DATED: Nov 24, 2016

  
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
All Instructions Acknowledged and Accepted

## APPENDIX 2

### Ecuador Judgment Investment Agreement

WHEREAS an Investment Agreement for the investment of \$250,000 to help fund the collection of the Ecuador Judgment against Chevron Corp. and/or its subsidiaries was agreed to \_\_\_\_\_, 2016, by and between, on the one hand, the Frente de Defensa de la Amazonia ("FDA"), in its capacity as both the exclusive interest-holder of the 10% award made by the Ecuador Judgment under Ecuador's Environmental Management Law and the beneficiary of the environmental remediation award and related awards under the Ecuador Judgment and the Ecuador Trust, and the President of the Board of the Ecuador Trust, and on the other hand, the Funder, as set forth herein;

WITH REFERENCE TO that Investment Agreement, the following terms shall apply to its understanding and interpretation as if such terms were incorporated expressly into that Agreement and made a part thereof:

1. Funder means:

Indigenous People Limited  
Ordnance House  
31 Pier Road  
St Helier  
Jersey JE4 8PW  
Channel Islands

a company incorporated in Jersey with registered number 122491

2. U.S. Representative means:

Steven R. Donziger  
245 W. 104th St., #7D  
New York, New York 10025.


DATED: \_\_\_\_\_

Carlos Guaman Gaibor  
President, FDA

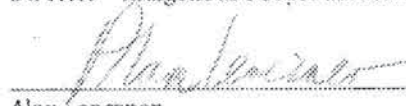
DATED: \_\_\_\_\_

Ernel Gabriel Chávez Parra  
BOARD PRESIDENT, ECUADOR TRUST

DATED: \_\_\_\_\_

  
Director - Indigenous People Limited

DATED: Nov 24, 2016

  
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
All Instructions Acknowledged and Accepted



### JOINT APPENDIX 3

*with reference to:*

Ecuador Judgment Investment Agreement dated May 2, 2016  
Ecuador Judgment Investment Agreements dated August 24, 2016  
Ecuador Judgment Investment Agreement dated November 14, 2016  
Distribution Escrow Agreement dated November \_\_, 2016  
*and others*

WHEREAS certain Investment Agreements (and Service Agreements) ("the Agreements") have been agreed to and funded to assist the collection of the Ecuador Judgment (as defined in the Agreements) against Chevron and/or its subsidiaries, by and between, on the one hand, the *Frente de Defensa de la Amazonia* (FDA), in its capacity as both the exclusive interest-holder of the 10% award made by the Ecuador Judgment under Ecuador's Environmental Management Law and the beneficiary of the environmental remediation award and related awards under the Ecuador Judgment and the Ecuador Trust (as defined in the Agreements), and the President of the Board of the Ecuador Trust ("Trust Board President"), and, on the other hand, various funders and professionals;

WHEREAS the Parties to the Agreements have irrevocably appointed the firm Lenczner Slaght Royce Smith Griffin LLP ("Canadian Counsel") to serve as Exclusive Distribution Escrow Agent (as defined in the Agreements) to collect any and all Ecuador Judgment Gross Proceeds (as defined in the Agreements) and distribute them in accordance with the Agreements;

WITH REFERENCE TO each Agreement, this Joint Appendix provides the Identity and corresponding Interest held by each of the following "Priority Existing Equity Holders" (as defined in the Agreements), which information shall apply to the understanding and interpretation of said Agreements as if such information was incorporated expressly into said Agreements and made a part thereof:

Identity	Agreement Date	Interest <sup>†</sup>
Krevlin (Investment)	May 2, 2016 July 11, 2016	0.1725%
Krevlin (Loan Conversion)	Feb. 7, 2011	Schedule <sup>‡</sup>
Elsler	July 2016	0.1250%
WDIS Finance LLC	Aug. 24, 2016 Nov. 1, 2016	0.2200%
Wellbeck Partners LLC	Aug. 24, 2016	0.1100%
Indigenous People Limited	November 14, 2016	0.1375%

<sup>†</sup> Percentage of Ecuador Judgment Gross Proceeds, unless otherwise noted

<sup>‡</sup> Reference to Schedule to Purrington Moody memo dated Jan. 23, 2012

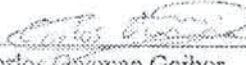
This Joint Appendix 3 may be amended only and exclusively to add one or more interest-holders as may be required by any future funding agreements, but may not be otherwise altered, amended, modified, or superseded in any other capacity, and specifically no interest stated herein may be diminished or diluted without express written consent of the affected interest-holder. The Escrow Agent shall not accept a purported superseding Joint Appendix 3 that does not conform to these instructions.

JOINT APPENDIX 3


This Joint Appendix 3 neither affirms nor denies the existence, nature, or quantum of any other claim to an interest, compensation, or reimbursement not stated herein, but rather makes reference to the paragraphs of the Distribution Escrow Agreement which allow the Exclusive Distribution Escrow Agent, in consultation with the Parties, to reserve funds reasonably necessary to pay legitimate claims, and further stands without prejudice to any rights any person or entity may have to make claims on any remainder funds once disbursed by the Escrow Agent pursuant to the Distribution Escrow Agreement.

The Canadian Counsel / Exclusive Distribution Escrow Agent shall maintain an up-to-date copy of this Joint Appendix 3 on file as the official copy.


DATED: \_\_\_\_\_

  
Carlos Guzman Gaibor  
President, FDA

DATED: \_\_\_\_\_

  
Ernest Gabriel Chévez Parra  
Trust Board President

DATED: Nov 24, 2016

  
Alan Lenczner  
Lenczner Slaght Royce Smith Griffin LLP  
*Acknowledged and Accepted*

# EXHIBIT 9



**From:** Aaron Marr Page <aaron@forumnobis.org>  
**Sent:** Monday, January 8, 2018 4:33 PM  
**To:** Katie Sullivan <Katie@Streamlinefamilyoffice.com>  
**Subject:** Re: Aguinda

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That's what I'm referring to in the first two paragraphs of my email

----- Original message -----

From: Katie Sullivan <Katie@Streamlinefamilyoffice.com>  
Date: 1/8/18 4:27 PM (GMT-06:00)  
To: Aaron Marr Page <aaron@forumnobis.org>  
Subject: RE: Aguinda

In our 'audit' we noted Cliff & FDA signed an enhancement letter dated Jan 3, 2017 that reflects a new total of 0.195% vs. 0.1375%.

Looks like that was addressed as well although c) is not included in your reply.

**From:** Aaron Marr Page [mailto:aaron@forumnobis.org]  
**Sent:** Monday, January 8, 2018 12:09 PM  
**To:** Katie Sullivan <Katie@Streamlinefamilyoffice.com>  
**Subject:** FW: Aguinda

FYI. Hopefully putting this one to bed

---

**From:** Aaron Marr Page  
**Sent:** Monday, January 8, 2018 11:09 AM  
**To:** 'Alan Lenczner' <alenczner@litigate.com>  
**Cc:** 'Steven Donziger' <sdonziger@donzigerandassociates.com>  
**Subject:** RE: Aguinda

Dear Alan,

At Steven's request, I have been following up on the errors/issues you noted (thank you) regarding the 10% "enhancement" granted to Cliff Eisler, pursuant to his agreement and as part of our efforts to keep him on board as an investor going forward.

You were correct about the error regarding the stated interest level. We have re-executed the enhancement letter and made appropriate notifications to all parties concerning the invalidity of the former. The newly executed letter(s) with the correct interest amount is attached in English and Spanish.

As to your other points:

- a) The new letter has a current date
- b) Our practice has been to have our side sign the agreements and send them to the investor to sign and hold in their files. Eisler may choose to return a fully executed copy to you to hold as an official copy, but that it up to him.
- d) The Spanish agreement is dated July 8. These agreements allow execution in counterparts and all hover around a set of dates rather than a single date. Rather than add confusion with multiple dates, Cliff was comfortable with just referencing the July 8 Spanish date, and we think it is his call.

Hopefully this addresses the remaining issues and you can sign and return these as soon as possible.

Many thanks,

Aaron/Steven

----- Forwarded message -----

From: **Alan Lenczner** <[alenczner@litigate.com](mailto:alenczner@litigate.com)>

Date: Wed, Dec 13, 2017 at 11:28 AM

Subject: Aguinda

To: Steven Donziger <[sdonziger@gmail.com](mailto:sdonziger@gmail.com)>

There is some confusion re the Eisler Agreement. The Agreement you sent me bears the date of July 11, not July 8. It references an interest of .125% for \$ 250,000.

The " addendum" you wish me to sign is

(a) dated Jan 3 2017

(b) is unsigned by Eisler --so I don't know who the funder is as there is no other reference to him in there

(c) speaks to the interest increasing from .175% not.125%

(d) refers to a previous agreement of July 8 not 11.

Please revise so that the records are correct and consistent.

--

Steven Donziger

212-570-4499 (land)

917-566-2526 (cell)

212-409-8628 (fax)

Steven R. Donziger

Law Offices of Steven R. Donziger, P.C.

245 W. 104th St., #7D

New York, New York 10025

To learn more about Steven and the Ecuador matter please visit [StevenDonziger.com](http://StevenDonziger.com).

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# **EXHIBIT 10**

## Ecuador Judgment Investment Agreement

In consideration of an Investment of \$152,000 from the Funder (defined below) to help fund the collection of the Ecuador Judgment (defined below) against Chevron and/or its subsidiaries ("Chevron"), the Frente de Defensa de la Amazonia ("FDA"), in its capacity as both the exclusive interest-holder of the 10% award made by the Ecuador Judgment under Ecuador's Environmental Management Law ("the 10% Award") and the beneficiary of the environmental remediation award and related awards under the Ecuador Judgment and the Ecuador Trust (defined below), together with the President of the Board of the Ecuador Trust (defined below), and the Funder, hereby agree as follows:

### 1. Definitions:

- a. Ecuador Judgment: The final judgment and award in the case of *Maria Aguinda et al. v. Chevron Corp.*, rendered in the first instance by the Provincial Court of Justice of Sucumbíos, 14 Feb. 2011, affirmed on appeal by the Sole Chamber of the Provincial Court of Justice of Sucumbíos, 3 Jan. 2012, certified for enforcement on 17 Feb. 2012, and affirmed by the National Court of Justice, 12 Nov. 2013. "Ecuador Judgment" in this Agreement refers to the legal obligation imposed on Chevron by the Ecuadorian courts as reflected in the aforementioned decisions (contained in Appendix 1) collectively.
- b. Ecuador Trust: "FIDEICOMISO MERCANTIL DE ADMINISTRACIÓN DE FLUJOS ADAT," created 1 March 2012 in Quito, Ecuador, pursuant to instructions in the Ecuador Judgments, in which the individual claimants in the *Aguinda* case placed the entirety of their interest in trust for the implementation of remediation and payment of related expenses, naming the Frente de Defensa de la Amazonia (FDA) as the sole beneficiary.
- c. Ecuador Judgment Gross Proceeds: The total amount of any and all funds actually collected by the Ecuador Parties or any of their agents or related parties related to the Ecuador Judgment, including, without limitation, any settlement monies paid by Chevron; any judicial orders obtained by claimants against Chevron that result in the recovery of funds, non-monetary assets, or anything of value; the 10% Award to the FDA; any post-judgment interest payments or penalties awarded by the Canadian courts or any court, and any additional award of fees or expenses by the Ecuadorian, Canadian, or any other court. Ecuador Judgment Gross Proceeds includes, without limitation, any interest payments on the pending judgment, fees, penalties, and the 10% Award.

### 2. Parties and Agents:

- a. "FDA": Frente de Defensa de la Amazonia
- b. "Trust Board President": Mr. Ernel Gabriel Chávez Parra, duly appointed President of the Board of the Ecuador Trust.
- c. "Ecuador Parties": The FDA and the Trust Board President.

- d. "Canadian Counsel": Lenczner Slaght Royce Smith Griffin LLP.
  - e. "Funder": As identified in Appendix 2.
  - f. "U.S. Representative": As identified in Appendix 2.
3. Grant of Interest: In consideration of the Investment, the FDA and the Trust President hereby grant the Funder an Interest ("Funder's Interest") of 0.076% of the total amount of the Ecuador Judgment and the Ecuador Judgment Gross Proceeds as further set forth herein.
4. Investment Deemed to be Made: The Funder shall cause the amount of \$152,000 to be paid to in accordance with the instructions of the U.S. Representative. Once Funder transfers and clears the full amount of the Investment, the Investment will have been deemed to be made and the Funder will be absolutely and irrevocably entitled to the Funder's Interest as defined above.
5. Co-ownership of Ecuador Judgment: As per this Agreement, the Funder will be a co-owner of the Ecuador Judgment up to the amount of his Interest in the Judgment. The Funder will not have the independent power to enforce his ownership Interest against Chevron or its subsidiaries. The Ecuador Parties, together with the *Aguinda* claimants and the communities affected by Chevron's contamination, retain ultimate authority over settlement and disposition of the dispute.
6. Ecuador Parties' Guarantees and Warranties: The FDA warrants that it is the sole beneficiary of the Ecuador Judgment in trust and hereby irrevocably warrants that the Funder is legally entitled to receive, and will receive, its Interest in accordance with this Agreement. The Ecuador Parties hereby further represent, warrant, and confirm that:
- a. The Ecuador Parties acknowledge that over the course of the litigation against Chevron, they have entered into various contracts with funders, lawyers, and other service providers, which also provide a grant of interest in the Ecuador Judgment Gross Proceeds. The Ecuador Parties guarantee to the Funder that the Funder's Interest does not infringe directly and/or indirectly on those interests and that, to protect Funder's Interest, all such legitimate interests, as listed at Existing Equity Appendix to this Agreement, will be honoured in full out of the Ecuador Judgment Gross Proceeds prior to any distributions to the Ecuador Parties.
  - b. The FDA warrants that it has (A) full power and authority to enter into and perform their obligations under this Agreement, (B) duly authorized the execution, delivery and performance of their obligations under this Agreement, and (C) obtained all necessary registrations, consents and approvals related to their execution, delivery and performance of their obligations under this Agreement.
  - c. The Ecuador Parties warrant the execution and the delivery of this Agreement does not in any way contravene any laws, rulings, or public policies whether in Ecuador or



Canada, nor contravene any of the Ecuador Parties' constituent or other governing documents or another contracts, commitments, or obligations of the Ecuador Parties or their affiliates or representatives (on their behalf) with any third parties.

- d. The FDA warrants that the full amount of its 10% Award due under the Ecuador Judgment, plus any interest on both the 10% Award and the entire corpus of the Ecuador Judgment, shall be used to guarantee full payment to the Funder and any Priority Existing Equity Holders identified in the Existing Equity Appendix.
7. Instructions to Counsel: The FDA and its representatives will, in a timely fashion and as frequently as necessary, instruct the Canadian Counsel in Canada and other counsel elsewhere involved in the collection of the Ecuador Judgment of the obligations under this Agreement, so that its terms will be effectuated forthwith upon collection of any Ecuador Judgment Gross Proceeds.
8. Authorization of Canadian Counsel As Exclusive Distribution Escrow Agent: The Ecuador Parties irrevocably authorize Canadian Counsel to be the Exclusive Distribution Escrow Agent to collect any of the Ecuador Judgment Gross Proceeds and to distribute said proceeds in accordance with this Agreement.
9. Use of funds: The Investment shall be used to fund litigation and other expenses dedicated to securing collection of the Ecuador Judgment in Canada and other jurisdictions as may be determined. The Funder shall, at its request, be entitled to consult with the U.S. Representative regarding how the Investment shall be spent, although the U.S. Representative shall retain final authority regarding use of funds, pursuant to the instructions of the FDA.
10. No Dilution: The Funder will not be subject to any dilution of Funder's Interest as defined above.
11. No responsibility for environmental remediation: The Funder will have no responsibility whatsoever for environmental remediation in the area of Ecuador affected by the Ecuador Judgment.
12. Priority of Distribution: The Ecuador Parties hereby irrevocably warrant that all obligations towards the Funder and the Prior Existing Equity Holders as listed in the Prior Equity Appendix will be satisfied in accordance with this Agreement and other relevant agreements prior to any distributions to the Ecuador Parties, the Ecuador Trust, or any Ecuador Judgment plaintiffs or claimants or members of any affected Ecuadorian communities.
13. Partial Recovery in Non-Settlement Scenario: To the extent the collection of any Ecuador Judgment Gross Proceeds takes place without a settlement and on a partial or incremental basis, the Ecuador Parties hereby irrevocably warrant that the Funder, along with other Priority Existing Equity Holders as listed in the Prior Equity Appendix, will be compensated a percentage of such funds corresponding to their respective interests and in accordance with

the Priority of Distribution as set forth herein. Such payments shall be made forthwith upon receipt of any Ecuador Judgment Gross Proceeds.


14. Collection of Judgment Funds Outside Canada: Should any part of the Ecuador Judgment Gross Proceeds be collected from Chevron from any jurisdiction outside Canada, Canadian Counsel, as the Exclusive Distribution Escrow Agent, is hereby authorized by the Ecuador Parties under this Agreement to obtain custody of said Proceeds and thereupon distribute them to the Funder and the Priority Existing Equity Holders as listed in the Prior Equity Appendix in accordance with this Agreement.
15. Obligations of Canadian Counsel: Canadian Counsel hereby accepts irrevocable instructions to adhere to all of the terms of this Agreement and will abide by those instructions.
16. Binding and Irrevocable Authority of the FDA: The signatory of the FDA to this Agreement affirms that he has the authority to bind the organization, and his signature and agreement shall bind the FDA upon ratification of this Agreement by the FDA Executive Committee.
17. Information: The Funder will be kept apprised on a regular basis, and upon its request, of all material developments in the litigation.
18. Common Legal Interest: The FDA, the Ecuador Trust and the Funder have a "common legal interest" in enforcing the Ecuador Judgment, this Agreement, and any discussion, evaluation and negotiation or other communications and exchanges of information relating thereto.
19. Counterparts: This Agreement may be signed in multiple counterparts. Each counterpart shall be considered an original instrument, but all of them in the aggregate shall constitute one Agreement.
20. Confidentiality: The Parties agree that the details of this Agreement, and all related communications, will be kept confidential as between the Parties and will not be divulged to third Parties.
21. Conflict of Languages: To the extent there is a conflict between the English and Spanish versions of this Agreement, the English version shall apply.
22. Assignment: Neither this Agreement, nor any rights, interests, obligations and duties arising hereunder may be assigned or conveyed; except that the Funder shall be allowed the right to assign all or part of his interest to a member of his immediate family, or to a trust, pension plan or other entity for the benefit of the Funder or one or more individuals in his immediate family.
23. Severability & Invalidity: If any term or provision in this Agreement will in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement will not be affected.




24. Entire Agreement: This Agreement shall constitute the entire agreement between the parties hereto, and shall supersede all prior agreements, understandings and negotiations between the parties with respect to the subject matter of this Agreement.
25. Governing law: This Agreement shall be governed by the law of Ontario, Canada. The courts of Ontario shall have exclusive jurisdiction to hear any claim or dispute related to this Agreement.

DATED: January [●], 2017

DATED: 03 de febrero, 2017

  
\_\_\_\_\_  
Carlos Guaman Gaibor  
President, FDA

DATED: 03 de febrero, 2017

  
\_\_\_\_\_  
Ermel Gabriel Chavez Parra  
President of the Board, ECUADOR TRUST

DATED: \_\_\_\_\_

\_\_\_\_\_  
FUNDER

this is a different  
version than that  
signed by the  
FDA + the Trust.

this version is  
missing:

# 11      Remediation

# 12      Property

## Ecuador Judgment Investment Agreement

In consideration of an Investment of \$152,000 from the Funder (defined below) to help fund the collection of the Ecuador Judgment (defined below) against Chevron and/or its subsidiaries ("Chevron"), the Frente de Defensa de la Amazonia ("FDA"), in its capacity as both the exclusive interest-holder of the 10% award made by the Ecuador Judgment under Ecuador's Environmental Management Law ("the 10% Award") and the beneficiary of the environmental remediation award and related awards under the Ecuador Judgment and the Ecuador Trust (defined below), together with the President of the Board of the Ecuador Trust (defined below), and the Funder, hereby agree as follows:

### 1. Definitions:

- a. Ecuador Judgment: The final judgment and award in the case of *Maria Aguinda et al. v. Chevron Corp.*, rendered in the first instance by the Provincial Court of Justice of Sucumbíos, 14 Feb. 2011, affirmed on appeal by the Sole Chamber of the Provincial Court of Justice of Sucumbíos, 3 Jan. 2012, certified for enforcement on 17 Feb. 2012, and affirmed by the National Court of Justice, 12 Nov. 2013. "Ecuador Judgment" in this Agreement refers to the legal obligation imposed on Chevron by the Ecuadorian courts as reflected in the aforementioned decisions (contained in Appendix 1) collectively.
- b. Ecuador Trust: "FIDEICOMISO MERCANTIL DE ADMINISTRACIÓN DE FLUJOS ADAT," created 1 March 2012 in Quito, Ecuador, pursuant to instructions in the Ecuador Judgments, in which the individual claimants in the *Aguinda* case placed the entirety of their interest in trust for the implementation of remediation and payment of related



expenses, naming the Frente de Defensa de la Amazonia (FDA) as the sole beneficiary.

- c. Ecuador Judgment Gross Proceeds: The total amount of any and all funds actually collected by the Ecuador Parties or any of their agents or related parties related to the Ecuador Judgment, including, without limitation, any settlement monies paid by Chevron; any judicial orders obtained by claimants against Chevron that result in the recovery of funds, non-monetary assets, or anything of value; the 10% Award to the FDA; any post-judgment interest payments or penalties awarded by the Canadian courts or any court, and any additional award of fees or expenses by the Ecuadorian, Canadian, or any other court. Ecuador Judgment Gross Proceeds includes, without limitation, any interest payments on the pending judgment, fees, penalties, and the 10% Award.

## 2. Parties and Agents:

- a. "FDA": Frente de Defensa de la Amazonia
- b. "Trust Board President": Mr. Ermel Gabriel Chávez Parra, duly appointed President of the Board of the Ecuador Trust.
- c. "Ecuador Parties": The FDA and the Trust Board President.
- d. "Canadian Counsel": Lenczner Slaght Royce Smith Griffin LLP.
- e. "Funder": As identified in Appendix 2.
- f. "U.S. Representative": As identified in Appendix 2.

3. Grant of Interest: In consideration of the Investment, the FDA and the Trust President hereby grant the Funder an Interest ("Funder's Interest") of 0.076% of the total amount of the Ecuador Judgment and the Ecuador Judgment Gross Proceeds as further set forth herein.
4. Investment Deemed to be Made: The Funder shall cause the amount of \$50,000 to be paid (for total consideration of \$152,000 inclusive of earlier payments) in accordance with the instructions of the U.S. Representative. Once Funder transfers and clears the additional \$50,000 of the Investment, the full Investment will be deemed to have been made and the Funder will be absolutely and irrevocably entitled to the Funder's Interest as defined above.
5. Co-ownership of Ecuador Judgment: As per this Agreement, the Funder will be a co-owner of the Ecuador Judgment up to the amount of his Interest in the Judgment. The Funder will not have the independent power to enforce his ownership Interest against Chevron or its subsidiaries. The Ecuador Parties, together with the *Aguinda* claimants and the communities affected by Chevron's contamination, retain ultimate authority over settlement and disposition of the dispute.
6. Ecuador Parties' Guarantees and Warranties: The FDA warrants that it is the sole beneficiary of the Ecuador Judgment in trust and hereby irrevocably warrants that the Funder is legally entitled to receive, and will receive, its Interest in accordance with this Agreement. The Ecuador Parties hereby further represent, warrant, and confirm that:
  - a. The Ecuador Parties acknowledge that over the course of the litigation against Chevron, they have entered into various



contracts with funders, lawyers, and other service providers, which also provide a grant of interest in the Ecuador Judgment Gross Proceeds. The Ecuador Parties guarantee to the Funder that the Funder's Interest does not infringe directly and/or indirectly on those interests and that, to protect Funder's Interest, all such legitimate interests will be honoured in full out of the Ecuador Judgment Gross Proceeds prior to any distributions to the Ecuador Parties.

- b. The FDA warrants that it has (A) full power and authority to enter into and perform its obligations under this Agreement, (B) duly authorizes the execution, delivery and performance of its obligations under this Agreement, and (C) obtained all necessary registrations, consents and approvals related to the execution, delivery and performance of its obligations under this Agreement.
  - c. The FDA warrants that the full amount of its 10% Award due under the Ecuador Judgment, plus any interest on both the 10% Award and the entire corpus of the Ecuador Judgment, shall be used to guarantee full payment to the Funder and any Priority Existing Equity Holders.
7. Instructions to Counsel: The FDA and its representatives will, in a timely fashion and as frequently as necessary, instruct Canadian Counsel and other counsel involved in the collection of the Ecuador Judgment of the obligations under this Agreement, so that its terms will be effectuated forthwith upon collection of any Ecuador Judgment Gross Proceeds.

8. Authorization of Canadian Counsel As Exclusive Distribution Escrow Agent: The Ecuador Parties irrevocably authorize Canadian Counsel to be the Exclusive Distribution Escrow Agent to collect any of the Ecuador Judgment Gross Proceeds and to distribute said proceeds in accordance with this Agreement and the Distribution Escrow Agreement.
9. Use of funds: The Investment shall be used to fund litigation and other expenses dedicated to collecting the Ecuador Judgment and other case-related expenses including but not limited to the defense of the U.S. representative in U.S. courts. The Funder shall, at its request, be entitled to consult with the U.S. Representative regarding how the Investment shall be spent, although the U.S. Representative shall retain final authority regarding use of funds.
10. No Dilution: The Funder will not be subject to any dilution of Funder's Interest as defined above.
11. Priority of Distribution: The Ecuador Parties hereby irrevocably warrant that all obligations towards the Funder and the Prior Existing Equity Holders will be satisfied prior to any distributions to the Ecuador Parties, the Ecuador Trust, or any Ecuador Judgment plaintiffs or claimants or members of any affected Ecuadorian communities.
12. Partial Recovery in Non-Settlement Scenario: To the extent the collection of any Ecuador Judgment Gross Proceeds takes place without a settlement and on a partial or incremental basis, the Ecuador Parties irrevocably warrant that the Funder, along with other Priority Existing Equity Holders, will be compensated a percentage of such funds equivalent to the percentage of Funder's



Interest in the Ecuador Judgment. Such payments shall be made forthwith upon receipt of any Ecuador Judgment Gross Proceeds.

13. Collection of Judgment Funds Outside Canada: Should any part of the Ecuador Judgment Gross Proceeds be collected from Chevron from any jurisdiction outside Canada, Canadian Counsel, as the Exclusive Distribution Escrow Agent, is hereby authorized by the Ecuador Parties under this Agreement to obtain custody of said Proceeds and thereupon distribute them to the Funder and the Priority Existing Equity Holders in accordance with this Agreement.
14. Binding and Irrevocable Authority of the FDA: The signatory of the FDA to this Agreement affirms that he has the authority to bind the organization.
15. Information: Upon reasonable request, investor shall be kept apprised on a regular basis of all material developments in the litigation.
16. Common Legal Interest: The FDA, the Ecuador Trust and the Funder have a "common legal interest" in enforcing the Ecuador Judgment, this Agreement, and any discussion, evaluation and negotiation or other communications and exchanges of information relating thereto.
17. Counterparts: This Agreement may be signed in multiple counterparts. Each counterpart shall be considered an original instrument, but all of them in the aggregate shall constitute one Agreement.

18. Confidentiality: The Parties agree that the details of this Agreement, and all related communications, will be kept confidential as between the Parties and will not be divulged to third Parties.
19. Conflict of Languages: To the extent there is a conflict between the English and Spanish versions of this Agreement, the English version shall apply.
20. Assignment: Neither this Agreement, nor any rights, interests, obligations and duties arising hereunder may be assigned or conveyed; provided, however, that nothing in this agreement can be construed to block the Funder from assigning all or part of his interest to a member of his immediate family, or to a trust, pension plan or other entity for the benefit of the Funder or one or more individuals in his immediate family.
21. Severability & Invalidity: If any term or provision in this Agreement will in whole or in part be held to be illegal or unenforceable under any enactment or rule of law, that term or provision or part shall be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement will not be affected.
22. Entire Agreement: This Agreement shall constitute the entire agreement between the parties and shall supersede all prior agreements, understandings and negotiations between the parties with respect to the subject matter of this Agreement.
23. Governing law: This Agreement shall be governed by the law of Ontario, Canada. The courts of Ontario shall have exclusive jurisdiction to hear any claim or dispute related to this Agreement.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Carlos Guaman Gaibor  
President, FDA

DATED: \_\_\_\_\_

\_\_\_\_\_  
Ermel Gabriel Chávez Parra  
President of the Board, ECUADOR TRUST

DATED: 1/31/17

  
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FUNDER